HB

2

COMMITTEE REPORT

SENATE

5/6/82

FURTHER: Finance

Date: May 12, 1982

Mr. President:

The Committee on JUDICIARY has had CSHB 2(Fin) am relating to land

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

_____

_____

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_____

_____

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_____

MEMBERS HAVING
OTHER RECOMMENDATIONS:

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_____

_____

CHAIRMAN

S 60 (Rev. 12/78)

SENATE AMENDMENT

BY SENATOR ANDERSON

To: _____ SENATE BILL No. _____

To: CS FOR HOUSE BILL No. 2

PAGE: LINE:

AS 38.04 is amended by adding a new section to read:

Sec. 38.04.920. GRAZING LANDS. notwithstanding any other provision of law, state lands classified for agricultural purposes currently used for grazing or with a vegetation coverage suitable for grazing shall retain current use or classification upon the effective date of this Act.

SENATE JUDICIARY
STANDING COMMITTE
April 12, 1982
1:30 p.m.

Members Present: Senator Pat Rodey, Chairman
Senator Bill Ray
Senator Nels Anderson
Senator Charles Parr

Members Absent: Senator Don Bennett

COMMITTEE CALENDAR

HB 2 "An Act relating to land; and providing for .nd effective date."

HB 473 "An Act changing the classification of and punishment for certain crimes against the person."

HB 34 "An Act requiring the preparation of a course transferability guide covering courses in post-secondary institutions; and providing for an effective date."

HB 548 "An Act providing for legal services in civil cases for persons who are financially unable to obtain legal counsel.

HB 848 "An Act reenacting the law relating to the maritial deduction in testamentary transfers; and providing for an effective date."

HB 621 "An Act providing for the issuance of certificates of birth for persons born outside the United States and adopted by Alaskan residents."

HB 637 "An Act relating to taking, purchase, or sale of certain fishery resources.

WITNESS REGISTER

Dale Cheek
Department of Labor
Box 630, Juneau, Ak 99811
Np Phone provided.
Position Statement: Observed.

Theresa R. Hebert

Exxon
Pouch 6601, Anchorage, Ak
No Phone provided.
Position Statement: Testified on HB 2.

Bill Lodwig
Department of Health & Social Services
Pouch H-03, Juneau, Ak 99811
No Phone Number provided.
Position Statement: Testified on HB 473.

William Nix, Commissioner
Department of Public Safety
Pouch N, Juneau, Ak 99811
465-4322
Position Statement: Testified on HB 473.

Julia Coster, Aide
Rep. Ramona Barnes
Pouch V, Juneau, Ak 99811
465-3718
Position Statement: Testified on HB 473.

Caren Robinson, President
Alaska Network on Domestic Violence and Sexual Assault
P.O. Box 809, Juneau, Ak 99801
No Phone provided.
Position Statement: Testified on HB 473.

Jeff Haynes, Deputy Commissioner
Department of Natural Resources
Pouch M, Juneau, Ak 99811
465-2400
Position Statement: Testified on HB 473 & HB 2.

Barry Stern, Assistant Attorney General
Department of Law
Pouch KC, Juneau, Ak 99811
465-3460
Position Statement: Testified on HB 473.

Rodger Painter
Executive Director of
United Fishermen of Alaska
(no address or phone provided)
Position Statement: Testified on HB 637, explained that the amendment was developed in conjunction with the processors.

PREVIOUS ACTION

HB 34 — Refer to S. Health, Education & Social Services Committee meeting 5/11/82, for

waive of committee referral and referred to S. Judiciary Committee. Refer to H. HESS Committee meeting 4/24/81. During the Senate Judiciary Committee meeting of 5/12/82 Senator Parr moved to hold the bill till the next meeting to consider it further.

HB 2

Please refer to S. Resources Committee minutes 05/03/82. Please refer to H. Resources Committee meeting 3/12/82. During the Senate Judiciary Committee meeting of 5/12/82 Senator Anderson proposed an amendment, under the direction of Senator Rodey, held the bill in committee till the morning meeting in order for Mr. Haynes, Mr. Bruce and Senator Kerttula to get together and put together a Committee Substitute for HB2.

HB 548

No Senate Previous Action to report. H. Judiciary Committee meeting 5/05/82. During the Senate Judiciary Committee meeting of 5/12/82 Theresa Herbert representing Exxon proposed a amendment that entails 18 words. That Exxon only provide initially processed data from the group shoot survey and would be able to protect the initial processed data from proprietary surveys. Senator Ray moved the Exxon amendment. Senators Anderson and Rodey raised their hands in support of the Exxon amendment. Senators Ray and Parr raised their hand in opposition of Exxon's amendment. Mr. Haynes of the Department of Natural Resources explained the department credit tax amendment. Mr. Haynes also explained establishing class "B" felony for willfully disclosing secured information and bonding third party contractors. The bill stayed in committee until the next meeting for further consideration.

HB 848

No Senate Previous Action to report. Please refer to H. Judiciary Committee meeting 4/01/82.

HB 473

No previous action to report. During the Senate Judiciary Committee meeting of 5/12/82 Barry Stern of the Department of Law proposed a Committee Substitute that deals with the subject of all Class A violent crimes that specify a presumptive sentence of 5 years on any 1st offense Class A

felony. And if a weapon was used the sentence would be increased to 7 years. In relation, the Judge would have the discretion to raise that 5 year presumptive sentence to 20 years for aggravating factors and decrease it to 2 1/2 years for mitigating factors. Conclusively the offender would not be eligible for parole. Julia Coster representing Ramona Barnes, presented to the S. Judiciary Committee a position statement from Representative Barnes - see supplement 1. Senator Ray moved to adopt the Department of Law's proposed Committee Substitute as the Committee Substitute. Senator Parr objected and the bill was tabled until the next meeting for further consideration.

HB 621

No previous action to report. During the S. Judiciary Committee meeting on 5/12/82 Senator Ray moved to adopt the Committee Substitute, the Committee Substitute received unanimous consent for adoption. Senator Ray moved bill out with individual recommendations. The bill was passed from Committee.

HB 637

For Previous Action please refer to Senate Resources Committee Record of 5/6/82. During the S. Judiciary Committee meeting on 5/12/82 Mr. Bruce explained the amendment: page 3, line 16 now reads "a person who violates this section". Formerly read "a person who violates or assists in the violation of this section". Same changes made on page 5, line 1. Page 2, line 23 reads "has been convicted of three offenses under this section. Formerly read "has been convicted of three or more offenses under this section. Senator Ray and Parr asked to hold this bill over till the next Senate Judiciary meeting for further consideration.

ACTION NARRATIVE

Tape #043
Recording
Number 0010

Senator Rodey: Meeting came to order at 12:00 p.m. with member Senators Rodey, Anderson, Parr, and Ray present. Senator Bennett was absent. We are discussing the method of moving bills expeditiously from the Committee, with the closing days of the

session, would it be possible to come in here at 9:00 a.m. for approximately 10 minutes. I want the committee members to see the actual language in the bill, to insure that we have no problems, the Senate relies upon our work on these bills. We should start tomorrow morning, because I suspect there will be drafts back in the morning.

Number 0016 — Senator Rodey: First I would like to take up HB 848 by Mr. Hayes. "An Act relating to the law relating to maritial deduction in testamentary transfers; and providing for an effective date." This bill has been before us previously, the bill has heard testimony, there was an agreement by the Committee but there was no action by the Chairman. May I have a motion to pass this bill from Committee.

Number 0020 — Senator Anderson: So moved Mr. Chairman.

Number 0021 — Senator Rodey: It has been moved that HB 848 be passed from Committee with individual recommendations. Is there any objection to that motion. Hearing no objection, the bill is passed from Committee. Next SB 621. Oh, HB 621. This is a bill relating to certificates of birth, births that are born outside the United States and that are adopted by Alaskan residents.

Number 0027 — Senator Ray: Adopt a Senate Committee Substitute Mr. Chairman.

Number 0027 — Senator Rodey: It has been moved that the Senate Committee Substitute be adopted, is there any objection to that motion. Hearing no objection, the Senate Committee Substitute is adopted.

Number 0028 — Senator Ray: Could it be moved out with individual recommendations?

Number 0029 — Senator Rodey: It's been moved that HB 621 be passed from committee with individual recommendations. Is there any objection to that motion. Hearing no objection, HB 621 is passed from committee.

Number 0042 — Senator Rodey: Next we will take up HB 637, from Mr. Chuckwuk. "An act relating to purchase sale of certain fishery resources.

Mr. Bruce we have the Committee Substitute before us. Could you go through that with Bennett and the Committee members.

Number 0044

Mr. Bruce: Well, I could Mr. Chairman, the only thing, I have made a few technical changes where they designate the classification of misdemeanor, whether it is an A or a B, and we've got some language which is superfulous on page 3, line 16, where the section now reads "a person who violates this section". It formerly read "a person who violates o· assists in the violation of this section". And under provisions of the Criminal Code a person will be covered in the violation.. .... any way the same change is made on page 5, line 1, in which existing. .....I should go back to the beginning, page 2, line 23, it did read "has been convicted of three offenses or more under this section"; and I just took out the "or more" so it makes it just three.

Number 0058

Senator Rodey: Senator Ray.

Number 0058

Senator Ray: Well here we have something similar to other responsibilities where you have somebody else other than the licensee themself, is or could be responsible in a offense where it was causing them to lose their license. And sometimes that isn't the best policy. I understand what your saying, but at the same time, you are putting the person who has the investment, you are putting the damage into an employee whose in a policy making decision. What is the policy of making decisions. In other words to buy fish or not, is that a policy?

Number 0066

Senator Rodey: Which section are you referring to specifically?

Number 0068

Senator Ray: D on page 2. You had it, a licensee or an officer director or an employee in a policy making position. Now how do you construe what a policy making position is. In other words, somebody with a substantial investment at the mercy of somebody who could be a strong boss in a fish gang someplace. It seems like that is a pretty heavy thing to put upon upon a licensee.

Number 0075 Senator Rodey: Let me direct a question to Mr. Painter.

Number 0076 Mr. Painter: Yes sir, this language was developed in conjunction with the processors, who would be very interested in who takes the responsibility. The Attorney's say that that language would leave it to the discretion of the court to be decided to on a case by case basis as to who is in a policy making decision. We didn't use language that would say Foreman, or Superintendent, or any kind of titles like that. Because they mean different things at different operations. Policy making position I think is clear, that they have influence over a broad activities of the fish buying operation, not just a.....

Number 0088 Senator Rodey: Senator Ray.

Number 0088 Senator Ray: Well you have somebody here who is buying fish, and he buys fish illegally three times. He is just buying fish, he is the guy down there that's taking the slip. And the licensee might not even know it, and when the time comes, where all of a sudden he's found out that the guy is gone; and the licensee loses his licences. That's a little heavy.

Number 0093 Senator Rodey: Mr. Painter.

Number 0094 Mr. Painter: Mr. Chairman, while that language was picked very carefully to avoid the very situation your talking about. Employee and policy making position would be someone who has the power from the company, the Board of Directors, to carry out the activities of that corporation. I wouldn't get down to the level of the individual fish buyers, or it would be the Superintendent of the cannery who sets the policy for the whole operation.

Number 0100 Senator Ray: That's your interpretation. That doesn't necessarily mean that the court is going to accept it.

Number 0103 Senator Rodey: Senator Anderson.

Number 0103 Senator Anderson: I understand what your saying, we ran into the same trouble with this particular section two years ago, when

I had the bill drafted. And as a matter of fact it was one of the things that really slowed it up during the waiting days at the end of the 1980 session. That language was primarily responsible for this bill not passing. In the mean time the processing industry has come up with this language that they are in agreement with, and one of the things that we really needed to take a good close look at, because of the nature of the problem, the abuses, we felt we had to take a real tough line. And of course the processing industry was in opposition to the language I had originally drafted, now this modifies it significantly so that they are satisfied with the things that you are concerned about won't occur. As a result of this new language that they have helped draft, as I understand it.

Number 0114 — Senator Ray: It doesn't satisfy me, and I am only one member, but I am going to oppose it greatly. At least that section of it.

Number 0115 — Senator Rodey: Senator Parr.

Number 0115 — Senator Parr: I have not heard any testimony on this yet, there is a bill here in front of me to look at. But nobody has said why it is needed, what it will do exactly or anything else. I hope you are not remotely looking at passing it out at this time.

Number 0118 — Senator Rodey: No this bill is not on my list of bills that we have heard previously.

Number 0119 — Senator Ray: Could we hold this one over Mr. Chairman and perhaps we could get together and formulate additional language to it to identify policy making or something like that.

Number 0121 — Senator Anderson: I hope we do not hold it over too long.

Number 0122 — Senator Parr: I am not interested in holding it too long, but I would like someone to tell me....

Number 0123 — Senator Rodey: If it is a situation that the members can, perhaps, tomorrow mornings, perhaps we can.....Yes, Senator Anderson.

Number 0124 Senator Anderson: Excuse me Mr. Chairman.

Number 0124 Senator Rodey: At tomorrow mornings meeting perhaps we can take this up, we'll have some procedural motions, and we can take that bill up. I would like to move these matters along as expeditiously as good workmanship will allow. I think the body is relying on us to make it in a workman like manner. That bill will be laid on the table. Next I would like to take up HB 2. At the request of Mr. Anderson the bill has been split. The seismic portion is being put on another House title, it will be heard, we can take some testimony on that. The portion that deals with homestead provision is in the bill, the portion dealing with the University of Alaska.....

Number 0147 Unanimous: May I have a copy of that please. Thank you so much. This is for Senator Bennett's package. (sic) yes, Senate Bill 261.

Number 0150 Senator Rodey: My error on the bill, we have separated the bill into three separate bills. Which I am not sure whether that is necessarily the intention of the Committee, or perhaps the best tactic on this. Perhaps if I could here first from Mr. Haynes with regard to the Departments position on the homestead bill.

Number 0158 Jeff Haynes: With the Department of Natural Resources. I am speaking on behalf of Commissioner Katz who is absent at a long standing commitment to a public hearing on the oil and gas leasing schedule. On the homestead bill and I see you're talking about only that portion of what is or whether to. This bill essentially adds homesteading for a method for obtaining state land under the existing land disposal program. And what the homesteading concept does is trade sweat equity in a form of constructing a habitable dwelling, living on land for 35 months out of seven years, clearing a portion of the land having it surveyed in return for forgiveness of the purchase price. So that if a applicant to a homestead parcel complies with the statutory requirements that constitute the sweat equity. Then the applicant obtains title to the land without having to pay any purchase

The maximum is forty acres but by the staking instruction that we have set. We can limit it to smaller than that if the carrying capacity of lands that are.....

Number 0241 Senator Rodey: Why do we have to put any clearing instruction in there by statute? Particularly if it is not agricultural.

Number 0243 Mr. Haynes: Well, all I can tell you is that there is a number of varying points of view in prior committees that considered this bill and we support the bill. Because we feel that we have the administrative ability to address the kinds of concerns that you brought up. That were not included in the bill as a matter of law.

Number 0246 Senator Kerttula: Mr. Chairman. I do not want to antagonize the Deputy Commissioner who tends to have short views. But I frankly think that they don't have good land use planning as a spirit of this legislation and these fellows here who know what they are talking about may, if they do know what they are talking about, may not pass that on to the next generation of in-house bureauocrats. And they are going to read the law. And right now it looks to me like it says that, you know, the following. And that just hit me right in the face because I lived with it half my life.

Number 0255 Senator Ray: Mr. Chairman, under the section on page 2, the cap for homestead entry provides 1/8 of the land entered, if the land is not owned or tagged corporate use. Must be clear, cleared and prepared for cultivation. On page 1 you have a homesteaded entry, 320 acres; and then you got another one that's only 160 acres. And neither one of them before you are 20 acres.

Number 0265 Mr. Haynes: If I understand you question sir. On page one sub-section B, that refers to a maximum size for agricultural parcels, 320 acres. Which is the maximum size of our distribution. And the next one down would be the maximum size for remote parcels. Our existing remote parcel limitation is 40 acres. So that means under the homesteading option you would be able to stake up to 160 acres.

price. The way this homestead provision works here, is that it really presents an option for a participant in a land disposal program which could be applied to either to the small agricultural parcels that we sell. Or to remote parcels that we sell. Of either requiring the land under the existing remote parcel program or agricultural program, lottery program, or to do it through the homesteading method. It would be the purchasers choice. In other words if we open an area, a remote parcel staking the person could either stake it and get it surveyed pay the appraised value the way it reads in the law now. Or they could do it under the homesteading provisions as attained under title that way. The major difference, as I said, is that that purchasers ends up not having to pay purchase price for the land. The Department certainly supports the sweat equity provision in a homesteading provision and is in the support of the provisions of this bill.

Number 0184

Senator Rodey: Are there any other questions from the members of the committee? Yes, Senator Kerttula.

Number 0185

Senator Kerttula: Obviously having lived with this sort of thing, although I have never homesteaded, but I have watched homesteading destroy existing resource values of land. When you have to clear a portion of the land that is conditioned of acquisition, that land, you may well destroy the area and even the future habitability of that area. If you are not very, very careful. I have seen it in homesteading, in mountainous areas, and so on. Remote parcels may well be at times be exactly in this category. Now if it is truly agricultural lands, for conventional, non-grazing agriculture, I can understand the clearing of the land and showing progress. That is the typical homestead that was in the center of Kansas 150 years ago, or 1862, or what ever. Presently, you allow homesteading and require land clearing, some areas you destroy the value of that property by clearing the land and you have done nothing for it. You stripped it down to the very thin surface and you removed the root that stabilized it and built on what little

there is on top of this rock, sometimes in rather steep areas. And you must not do that. There is a condition of non-agricultural lands acquisition. If in fact you are going to have homesteading. You want to be very, very careful. Don't require people to destroy the values of that property in order to acquire it. And I have seen it, I've lived with it.

Number 0207

Mr. Haynes: The Department shares your concern exactly. First of all we are not in support of having people do something out on the land that doesn't make any sense in the first place. And I think that it would be our intent to try to direct this homesteading program to either agricultural parcels where clearing the land makes sense for agricultural purposes. Or remote parcels on lands that are actually containing agricultural soils even though we may not have classified them as agricultural lands.

Number 0224

Senator Kerttula: Do you say that in the law. Just superficially I was reading it, thats why I am asking.

Number 0225

Mr. Haynes: The law does not say that in so many words. No sir. We do have the ability to limit the application of this, so it doesn't apply to all remote parcels. But you would essentially have to rely on the Department in order to carry out what you are talking about.

Number 0227

Senator Rodey: Mr. Haynes it appears from the language on page 2, under the least restrictive portion of the bill, one twelve of a 160 acres or we are talking about around 20 acres would have to suffer the same mandatory clearing with the federal act, unwisely probable.

Number 0233

Mr. Haynes: Assuming that....and we do believe that under this bill we have the authority to limit, both the size and the application, of any homestead. In other words, we would not be required to allow 160 acre staking in all cases. We would limit it to less than that. It is a maximum of 160 acres that may be allowed for a homestead parcel. But for the same reason under our existing remote parcel program.

Number 0268

Senator Ray: What's AS 38.09.0308? A person with exterior boundaries by lottery should apply. Is there any maximum or minimums on that? That's page 2 at the top of the page. That's what you are referring to here in clearing the land.

Number 0276

Mr. Haynes: Yes, sir. That's actually the following section 40 is the one that contains the actual requirements for clearing the land. Which in the case of agricultural lands 1/4, and in the case of non-agricultural lands and remote parcels are.....

Number 0277

Senator Ray: 38.05.077, Mr. Chairman, if I might continue. 38.05.077 is what we are talking to and that is what we are relating to down here in the next section. That is a homestead entry under AS 38.05.077.

Number 0281

Mr. Haynes: That is a remote parcel.

Number 0282

Senator Ray: And what is the maximum on that?

Number 0283

Mr. Haynes: The maximum would be 160 acres.

Number 0285

Senator Ray: So you would have to clear 20 acres of the land.

Number 0286

Mr. Haynes: That's correct assuming that in our staking instruction we authorize entries up to the entire 160 acres.

Number 0287

Senator Rodey: Does the Committee think there ought to be any clearing instruction for non-agricultural lands. Senator Parr.

Number 0288

Senator Parr: I talked to Commissioner Katz about this and also Mr. Charney some time ago, about a concern of some of my constituents here. It wasn't always appropriate for small agricultural project to require clearing a certain number of acres. Depends on what you want to do with the land under the development plans that's the way they were all set up. But suppose a person wants to raise pigs or maybe do a number of other things, it may not always be the sensible thing to require a certain amount of acreage to be cleared. You might require a certain number of buildings to be constructed. Now this bill I think we need

to admit with the Department to accept an alternative to the clearance. And like I say it might be, say construction of certain whatever, the Department would make sense there, depending on the alternate thing. But the very, very small acreages are not going to be raising grain, generally speaking, the small acreage people will be doing something else, perhaps, sometimes truck stops. And for those cases it doesn't make sense to give an acreage clearance for them. I didn't find the opposition of that to be that of the Commissioner or Mr. Charney.

Number 0307

Mr. Haynes: I think our intention would be of where there was no sense in an agricultural parcel or whatever, to have a land clearing requirement would clearly be for some other use, that we would not apply the homestead program to those parcels. We just dispose of them under a regular lottery with the development requirement.

Number 0311

Senator Parr: I'm talking about agricultural, raising pigs is agricultural. There shouldn't necessarily be a clearance requirement, maybe it should require construction of certain kinds of buildings they normally have on a small farm, as an alternative to the clearance to the acreage. Are you following that.

Number 0315

Mr. Haynes: Well, I really haven't thought about it before in terms of what amounts to use as the habitable dwelling requirement, or another dwelling requirement substituted for the land clearing requirement. I guess if this law were to pass, what our intent would be if it were an agricultural parcel, or operations that did not require clearing land then we would consider not applying the homestead provisions we have. And simply selling it under our regular lottery program with the development requirement that included building, or whatever else.

Number 0324

Senator Kerttula: I am really sorry for walking in so late, Senator. Senator Parr again is correct, he's drawing from the experiences of those who have had the experience the same as mine. And there are all kinds of self destructive things that happen to be perfectly good grazing ground

on mountainside and so one. If you require for an agricultural parcel any land clearing in the conventional sense. And you have been out on those mountain sides in Talkeetna and so on. The whole thing will slip if you take out the roots. If you are going to have this program, for not in some places allowing homesteading type setting. Because there are agricultural type purposes. i.e. grazing, the things that Senator Parr has suggested and so on. Just worries me to even have it in the law as a necessary condition. Because I can just pull into the Hatcher Pass area and see the foolishness of that whole development.

Number 0337 — Senator Rodey: Is it the sense of the Committee that the requirement of clearing one acre of the land for non-agricultural use be eliminated from the bill.

Number 0341 — Senator Parr: On agricultural, I don't see any reason.

Number 0342 — Senator Rodey: Okay, Senator Anderson. The mandatory requirement that non-agricultural land be cleared.

Number 0344 — Senator Anderson: I don't think that it is necessary.

Number 0346 — Senator Rodey: With regard to the 1/4 is required for agricultural land. Is the feeling of the committee that that mandatory amount is appropriate, or language outlining a developmental plan be placed instead.

Number 0350 — Senator Ray: Is there the possibility that we could put in there some language that say when required by the Department.

Number 0352 — Senator Parr: Mr. Chairman I think Senator Ray and I think in the same direction. That is I would like to give the Department an option. Either the clearance of so much in land. Or its equivalent, I'm sure that's the best way to word that. Depending upon what the purpose is going to be.

Number 0358 — Senator Kerttula: Again, the grazing lands are agricultural, and you want to have the option of not clearing them. In fact you allow them to be homesteaded on a hillside.

Number 0361

Senator Rodey: Would the Committee prefer an option; one with clearing of agricultural land; or a developmental plan approved by the Department. Would be language off the top of my head. Senator Parr.

Number 0368

Senator Parr: I would like to ask Mr. Haynes a question. We did have a state homestead act at a point in time which wasn't quite like the federal member. Was there some special reason we didn't going back to that one, instead of going back to this one, which corresponds.

Number 0373

Mr. Haynes: We did have one and I know that there were problems with it, and that was back in 1972 or 1973. There were a number of administrative problems involving...I believe that was terminated.

Number 0377

Senator Parr: The reason why I was asking the question, is that we didn't have any requirement at all when land is not agricultural. All we have here right now would be to occupy the dwelling. It seems to me that the old State Homestead Act there is also a provision for roads for example. I'm dragging this out of memory too. There was for example a road credit of some sort.

Number 0383

Senator Kerttula: Our old homestead act was 10% down and the rest could split equity or cash. That's what it went to.

Number 0386

Senator Parr: You got a credit Mr. Chairman as I remember against the purchase price. So much for the home, so much for the roads, so much for the other buildings there were. All I am pointing out is that just building a home and living there for 35 months to get 160 acres maybe a little bit much.

Number 0390

Senator Anderson: Mr. Chairman, what is the intent of the chair on this particular bill. There is a bill going on in Resources now that is of importance to my district. And I do have an amendment to this bill that I would like the committee to consider. But I cannot be in two places at one time.

Number 0396

Senator Rodey: That's understandable. If you have an amendment, please leave it while you attend your other bill. I would like to get the bill in shape to move, it is on the

house priority list to get to the floor. We are breaking several of these out that were originally on this bill in front of the Committee. Do you wish to leave the amendment with us or do you....?

Number 0405 — Senator Anderson: I would prefer to be here when the amendment is brought up. It's just a little insignificant little amendment four pages long.

Number 0407 — Senator Rodey: We can come back to this when you return or we can take it up in the morning.

Number 0409 — Senator Anderson: Thank you.

Number 0410 — Senator Rodey: Mr. Haynes if you could work with Mr. Bruce on drafting the suggested language for the Committee Substitute. We will take this bill up in the morning. Senator Kerttula this will give you sufficient time, I know you are very concerned about this area, also it may impact your district perhaps more than other member's district.

Number 0412 — Senator Kerttula: That is very kind of you, I do have some thoughts on that issue.

Number 0417 — Senator Rodey: We will lay HB 2 aside. Next I would like to take up HB 34. This is one of the House bills that we used in a title to try and separate the ominous bill that came from the House. This relates to the transfer and ownership of the University Trust Lands.

Number 0425 — Mary Tutten: Director of Land Management for the University of Alaska's statewide system. I do not have prepared testimony to the instance. This bill has already gone through the Senate once and passed unanimously. I would however be more than willing to answer any questions about the bill, or give a summary to the members.

Number 0432 — Senator Rodey: I just wanted to make the Committee members aware that there was someone from the University in case ther. were any questions. It has been dealt with before and I don't wish to take the Committee's time with.....Yes, Senator Parr.

Number 0434

Senator Parr: One brief question Mr. Chairman, is what is in the packet now for Senate CS for HB 34, and Ms. Tutten has seen that I assume. This is the same thing that we have already dealt with, no changes.

Number 0439

Senator Rodey: Yes, it is in exactly the same form, there is no new changes. Is there any further question for Ms. Tutten.

Number 0442

Senator Rodey: I would like to discuss informally before we do pass that one, we will set that aside. Because that is one thing that should be passed out. Next is HB 548. This is the seismic portion of the bill that again was taken out. Is there someone from the Department. If I could call on someone from the industry who would like to testify.

Number 0455

Theresa Hebert: I am here on behalf of Exxon's attorney in the Anchorage office. As I testified on Monday before this Committee. We oppose forfeiture of geophysical data prior to a lease sale. Because we believe that forfeiture jeopardizes our competitive position in a lease sale. This position we believe is the very life blood of free enterprise. However, we sincerely believe we have compromised in good faith to help the DNR out of it's budget predicament. Only in the spirit of compromise have we testified that we are willing to provide the DNR raw field data and the associated material necessary to process and analyse that data. Yet DNR says that is not enough and that they also must have our initially processed data. We have responded that dollars will not compensate us for our initially processed data. Because of the intrensic worth of that data to us. And therefore the major issue to us is not dollars. The issue to use is the proprietary worth of that data or as you would the work of trade secrets. However, the issue is one of dollars to the DNR. We responded to the DNR by providing them quotes from three primary geophysical contractors in the state of Alaska. These quotes show that data is acquired at $15,000 dollars a mile or approximately $7.5 million dollars for a typical seismic shoot. Which we are willing to forfeit in order to achieve compromise. These quotes next show

that data is initially processed at $450 dollars by one contractor and up to $1,300 dollars by another contractor. However the DNR in essence has said that they also must save the relatively insignificant in processing that data as well. We had responded again in compromise with the request that we be allowed to at least be able to protect our initially processed data from proprietary surveys. Again, in order to achieve compromise we have proposed an amendment which would clarify that only initially processed data from a group seismic survey would be provided, yet the DNR has said that that is not enough. We must have more. Now we must respond that we can compromise no more. As I testified on Monday, proprietary surveys are so critically important to us, this type of survey involves one company, who through its own proprietary techniques has studied the results from the group seismic survey and has seen something that it wants to examine more closely. The company then conducts a proprietary survey that is usually no more than one hundred miles of seismic shoot. We stated that we would compromise and provide the raw field data from these proprietary surveys and that the DNR could in turn have this data processed or whatever it chooses. I might add that processing costs would be minimal because the proprietary shoots typically such a small shoot. Yet, the DNR has responded that raw field data from a proprietary survey is not enough. Again, I must say that we cannot compromise further. And again I ask this Committee to consider just 18 words addition to this bill which would make it clear that we can protect from disclosure our initially processed data generated from proprietary surveys. Mr. Chairman with your permission.... with your permission I would like to distribute this proposed amendment.

Number 0523

Senator Rodey: Please do that. I have one question as you are doing that. It has been alleged that this bill settles a law suit that is still in dispute going on in the Supreme Court. Is that correct?

Number 0526

Ms. Hebert: Well, it would not in essence settle the entire suit. There were 5 issues before the Superior Court. The Superior

involved to begin with and not assuming the risk and that sort of thing.

Number 0574 — Senator Ray: So what you are saying then is in a group seismic survey there wouldn't be anything in there secret anyway. If what one person knows and two people know it is no longer a secret. So what your saying is that its an open field day and it's available to anybody anyway.

Number 0581 — Ms. Hebert: Well it's not a secret and it is available to any party to purchase this. It is available, I think you are right.

Number 0583 — Senator Ray: You wouldn't have the same batting if it was an individual survey.

Number 0584 — Ms. Hebert: Exacily.

Number 0587 — Senator Parr: Mr. Chairman a question. Does Exxon, just using that as an example since you are here, do you have to have a permit to run this survey in the state.

Number 0589 — Ms. Hebert: Yes sir we do.

Number 0589 — Senator Parr: And the permit does not run through the requirement that your points establish.

Number 0592 — Ms. Hebert: Well that is what the present litigation it rose over.

Number 0593 — Senator Parr: In other words the requirement is included in the permit, is that what you are saying?

Number 0595 — Ms. Hebert: Well we maintain that without statutory authority they can not include that in the permit and they did or the DNR did pass regulations. And then attempted to promulgate those regulations be included into the permits.

Number 0600 — Senator Parr: So your position, though, it is without statutory authority that could not be included in one of the requirements in the terms of giving the permit (sic).

Number 0604 — Ms. Hebert: Yes sir.

Number 0605 — Senator Ray: The only trouble I have in any of this is that any exploration, or seismic

Court ruled that the DNR in our case, actually there were two Superior Court cases. In our case, the Superior Court ruled that the DNR does not presently have the authority to require this data. And they have attempted by regulation to require this data. The court reserved one issue. And that issue is before the Supreme Court and could possibly be remammed back down to the Superior Court and that involves the question of whether the taking of this data constitutes unfair taking, or unjust taking under the Alaska Constitution. So in response to your question it would settle the question of the DNR's authority, but it would not settle the question of whether it constitutes of taking without just compensation under the Alaska Constitution.

Number 0546

Senator Rodey: Which is a very good point. Obviously there would have to be payment involved should the court find that data isn't taking for some constitutional reason it would have to be justly compensated. At the very least with ignoring all of the other problems, it is just as well.

Number 0550

Ms. Hebert: Yes, and I think also the court would have to look at what is the taking. Is it just the worth of the data to acquire or process. Or is it just the worth of that data as a trade secret or is proprietary data. I think the level of taking would be an issue before the courts as well.

Number 0557

Senator Ray: Speaking to the proposed amendment. The first part of it there you speak of a group seismic survey. Does that mean where a group of people appliance go together and make the survey. Or is this a group. In other words this one, this one and this one as opposed to just this one which would be an individual survey.

Number 0565

Ms. Hebert: A group seismic survey is open to any party that wishes to join that survey. And it typically is a group of people that join together to conduct the survey, and then the results of that survey are also open to anyone who wishes to purchase. Now if a party wishes to purchase after the survey has already been conducted. There is normally a penalty involved. In order to keep people from not getting

data, or surveys that are done on the state land. I think that they should be made available to the state and the state must get the highest return on the resource and we not interested in who does the work as long as someone does it.

Number 0610 — Ms. Hebert: Well I would grant you that the constitution does provide that the state should maximize its return on its resources. The constitution also provides that the government shall not take or damage private property without just compensation. So I think there are two competing constitutional provisions here.

Number 0618 — Senator Ray: Well the idea of that is that the state would deny you the research and the survey unless you agreed to giving us the information so then you would be without it anyway.

Number 0623 — Ms. Hebert: We have also ma.ntained litigation that the state cannot condition the acceptance of a permit on the imposition of the unconstitutional provision. That a permitee should not be required to accept an unconstitutional requirement in order to move forward and accept a permit.

Number 0630 — Senator Ray: Is that law suit in the Alaska Supreme Court.

Number 0631 — Senator Rodey: Yes sir.

Number 0632 — Senator Ray: And who took it to the Supreme Courts, the companies or the State?

Number 0634 — Ms. Hebert: Well at this point since we wanted the Superior Court level the DNR has appealed our case to the Supreme Court. But there is another Superior Court case where the DNR won, so the states....yea, we have a one on one deal here.

Number 0640 — Senator Parr: How could a requirement of this information be furnished to be considered to be a taking without compensation if it were a part of the requirement that you obtain a permit would be a quid pro quo wouldn't it. You have not given any obligation to apply for a permit and you would not be under any obligation where the state says okay if you get the

permit in accordance with the information. Maybe on your existing situation as this is in statute. I don't see that this is taking without compensation.

Number 0647 — Ms. Hebert: Well I guess that I would have to respond to that again, what is the level of the taking vs. what we are having to accept. Is the.....

Number 0647 — Senator Parr: Wouldn't that be a matter in which the corporation concerned would make its own decision and it would say that the risk we take, or the cost to us is too great. And therefore, we would not enter into it like any other private contract. So you wouldn't be being deprived of something against your will.

Number 0654 — Ms. Hebert: You're right, we would have that choice and I think I would respond to that, that that is going to be to the states detriment if it proposed bidders to.....

Number 0658 — Senator Parr: That's a separate issue isn't it. Whether it is good public policy or not, that is not the issue which we are addressing here which is legal or constitutional requirements is what I'm talking about. Whether it is good public policy that's another ball game.

Number 0662 — Ms. Hebert: Well I would have to again go back to my former response that we feel like that it's in the state's best interest that we learn as much as we can before we bid on that lease. And that is in your best interest that we know as much as we possibly can and that we should not be required to accept an unconstitutional condition in order to pursue that activity.

Number 0670 — Senator Parr: But it wouldn't be unconstitutional is my point. If it's in statute and if the quid pro quo is not unconstitutional.

Number 0673 — Ms. Hebert: Well I would have to say that a Court, of course, would look at that issue and the question would be is it a quid pro quo.

Number 0678 — Senator Rodey: Are there further questions from the members of the Committee?

Number 0680

Senator Kerttula: Are you talking about it as a matter of contract agreeing to it another statement on agreeing to it. We should make sure. The necessary seismic information.....

Number 0685

Senator Rodey: Yes, that is what essentially the DNR proposal is, is a matter of state law be provided.

Number 0690

Ms. Hebert: So as you can see this amendment would make it clear that we would provide them raw field data generated by both proprietary surveys and group shoot surveys. But that we would only provide initially processed data from the group shoot survey and would be able to protect the initially processed data from a proprietary survey. And again I would ask this committee to balance the DNR's need to save the cost of processing data generated by relatively small proprietary surveys against our need to hold trade secrets in conference prior to release. But in addition we have also objected to the retroactive effect of this bill. And it raised serious legal questions on such effect. The DNR has responded that they must have data generated since January 1st. Again in order to reach compromise we have testified if the bill so required we would provide without protest raw field data and the necessary materials necessary to process and analysis which we have generated since January 1st. The DNR has responded that we must provide more. Again in order to achieve compromise we would be willing to provide initially processed data generated from group shoots since January 1st. However, if this bill is not clarified to exempt proprietary surveys and the initially processed data from those surveys, we expressly reserve the right to contest the legality of the DNR's authority to require raw field data and initially processed data generated by both group shoot and proprietary surveys. In addition in the event compromise fails, and I think as you can see we have in good faith (tape ends.....) disrespectful to the DNR. I would correct that impression that I have the highest regard of Commissioner Katz and his staff. However, we hope that this fiscal problem that faces DNR is a short

term problem. We do not believe that this legislature should adopt a long term solution to a short term problem.

Number 2/0001 — Senator Parr: Senator are we going to hear from DNR?

Number 0002 — Senator Rodey: Of course we are.

Number 0002 — Senator Parr: Because I will state right here and now that if it were simply the matter of DNR shortage of funds that would not be sufficient justification in doing it. The real justification is it is a good public policy and some ways we should encourage it. Maximize the state return. But the emphasis is..... has been on DNR's shortage of funds.

Number 0005 — Ms. Hebert: Mr. Chairman, could I respond to that. I have not raised this issue out of respect for Commissioner Katz' own interpretation but we have taken the position and maintain the position that this data is not necessary to maximize the state's returns on its resources. And I believe that the federal government has also reached that conclusion and has resently announced that it is going to move away from pre-sale analysis resources in making their determination of bidding systems, etc. And instead they are going to conduct a post sale analysis and I would also point out that we are required to provide all data generated from leases after a lease sale and in fact we do so provide that.

Number 0014 — Senator Rodey: Thank you very much. Yes, Mr. Haynes.

Number 0015 — Mr. Haynes: DNR for the Record. Ms. Tutten in correct that the situation requiring this change in the law really rises out the revenue shortfalls this year and budgetary necessities. We were willing to go through the litigation process on this; but when it became necessary to make capital budget reductions in conjunction with the current budget process that that placed us in a very disadvantageous position as far as the acquiring the seismic data by purchase. I think that Commissioner Katz has stated before that the Oil and Gas leasing schedule

concept is virtually sacred to the Department. Because without it there is no certainty, either to the industry or to the state that the potential oil and gas problems will be systematically explored and developed. And that it is necessary in order to both maintain a healthy industry and also a steady flow of hopefully state revenues there from. However, under both state law and good common sense, DNR must have geophysical data, sufficiently in advance of a sale to make the requisite design of the sale in order for constitutional reasons and state law reasons and just plain sensible reasons, decide the bidding method to select. Maximize competition as well as return. To analyze the cost effects of environmental stipulations that may severly penalize the lessee. To analyze the cost effects of track leases, recommended by other agencies. All of these are part of that pre-sale design very similar to the appraisal process that we do for any disposition of interest in state land. Ordinarily the Department obtains geophysical information primarily by purchase. However, we also adopted regulations last year to require geophysical information as a condition of conducting geophysical recognizance with on state lands, on public lands. That litigation has prevented us from actually retaining the data. In the necessity of making the capital budget reduction which includes a reduction of $3.5 million for geophysical data acquisition now for this year. Places the conduct of the fourth Beaufort Sea Lease sale, which is a very important sale in jeopardy, if DNR cannot obtain this data. Therefore, we have supported this amendment to the existing oil and gas statutes in order to have the data necessary to conduct this important sale. This amendment would require the submission of the uninterpreted geophysical data obtained from seismic work conducted on state lands after January 1, of 1982. There really policy issues that have come up in conjunction with this amendment. First of all the responsibility of the cost and that both Commissioner Katz and I have said before that the idea of obtaining this, not necessarily obtaining this free, we have mixed feelings about that. And that has been raised by several other legislators as

well, as to whether or not the Department in fact should pay for the data. Of course if, had the capitol budget as we originally presented it this year, that is something we could have done, but revenue shortfalls prevent that. However, we are recognizing that there are two philosophical sides to the cost issue. I presented language I think to the Committee before the hearing that would establish a credits program. Provide that the state would pick up to 50% of the share of geophysical data collection. Which would be credited against future royalty and tax payments. And that is something that DNR is willing to support, that's consistent to the committee's responsibility. Confidentiality is another matter which the industry has been very concerned about and we have too. We have backed changes to this amendment which make it a class B felony for willful disclosure of confidential data and also bonding requirements for third party contractors so that there is a maximum possible protection of the confidentiality objected. The third one, and the one in which there is serious level of disagreement of the level of data required. The spokesman for Exxon said they are willing to provide initially processed data from a group shoot and not from an individual company. The problem is is that we are capable of purchasing that data and have purchased that level of data from private companies before in conjunction with several lease sales. The companies are willing to provide it by sale. Had we have had a full capital budget amount that we had hoped to get before the revenue declines, that's what we would have done. We wouldn't be here. Unfortunately budgetary restriction and that very important fourth Beaufort Sea sale requires us to do that. We were only presented with raw data from a private company and had to process it ourselves. Including hiring dozens of new state employees, computer equipment, hiring additional contractor and the net cost to us would have been virtually in the vicinity of what our original capital budget request is. I believe the figures are that our budget has been reduced by $3.5 million and takes something over $2 or $2.5 million to process that law, and hire the employees to do it. So there is really no cost saving to us and

it doesn't solve our problem. The last thing that I had mentioned that these are in fact public lands, that we are the owner of those lands. Some people have different philosophical opinions as to whether the state should own those kinds of resources. But as long as it does it is up to the state to lease them responsibly and with the kind of data that any private land owner would use and acquire and require before they lease those resources. I am certain that any oil company or other land owning company, Native Corporation or otherwise, if they were in the position that we were would take the same position that we have about the data we need for the sale. It is extremely important that we have this data to comply not only with existing state law, require a pre-sale analysis before the Beaufort sale. But with the constitutionally mandated best interest decision that we have to make before making a disposition of an interest in a state land, including an oil and gas lease sale. And so therefore because we feel so very strongly about maintaining the oil and gas leasing schedule and being legally able to hold the fourth Beaufort Sea sale we feel that we have to have the data that is provided by this amendment.

Number 0092 Senator Ray: Do you oppose the amendment?

Number 0093 Mr. Haynes: The amendment does not solve our problems sir, we have lost $3.5 million that would cost an additional $2.5 million and it would not provide us with the data we needed for the sale.

Number 0094 Senator Ray: Do you oppose the amendment?

Number 0094 Mr. Haynes: Yes, sir.

Number 0094 Senator Rodey: Senator Parr.

Number 0095 Senator Parr: Mr. Hanyes you've said you had been buying data, did you buy data from Exxon?

Number 0095 Mr. Haynes: I don't believe Exxon has provided any, no.

Number 0096 Senator Parr: Do you buy it from people who are in the same position as Exxon.

Number 0097 Mr. Haynes: Major oil companies whose names you would recognize.

Number 0097 Senator Ray: What was the concern of these companies about this confidentiality when you say you need the data. That seems to be to me a good part of it is a trade secret and very, very valuable and is such a valuable private property. That the state cannot take without compensation etc. etc. But is confidentiality is that important, why are these companies even willing to sell to you?

Number 0102 Senator Rodey: Caren do you have a comment.

Number 0103 Caren Robinson: This was data that we need to hold the upcoming lease sale for next September. Without the data, we were in a position of cancelling the sale and not simply delaying it for a 5 month period and the companies agreed with us that is was better to hold the sale this year. Than to delay it for indefinite period of time. And they agreed that therefore sell.

Number 0107 Senator Parr: I guess my question is, very confidentiality is all that much of a concern. If somebody was still willing to sell it, wouldn't be willing to give it, but they would be willing to sell it to the Department and the confidentiality to those concerned, seemed to take second place. I don't guess you have your cake and eat it to. The stuff is either so dog gone valuable you shouldn't turn it loose at all in any form in circumstances. Or else it is not all that valuable.

Number 0113 Mr. Haynes: Well I'm sure its valuable to them. Again when they are firing that on state lands on unleased acreage, that information that they acquire, gives them a competitive edge.

Number 0114 Senator Parr: But you wouldn't take their risk for confidentiality, right.

Number 0115 Mr. Haynes: Well, assuming there is a risk.

Number 0115 Senator Parr: Well, as I am saying, but assuming there is a risk they are willing to take that risk and sell it to us.

Number 0116 Mr. Haynes: Yes sir they have made those same risks.

Number 0117 Senator Parr: And now they are not willing to take that risk and give it to you.

Number 0117 Mr. Haynes: That's why we felt that to the extent, there is a cost issue, there are two sides to that one. Whether or not you feel that state should actually pay for the data or be able to acquire it free. And that's why we have advanced that language as a way of taking the other side from the way the regulations currently read.

Number 0121 Senator Rodey: To be as expeditious as possible, I would like to ask for Ms. Robinson to respond to that. You're are squeezing your pencil rather hard so I presume you disagree.

Number 0123 Ms. Robinson: Well I don't know the circumstances to what he is referring to in terms of approaching the companies in which companies are willing to sell and what level of data they are willing to sell. But I think that I would be awfully red in the face if I were testifying here today that, that initially processed data that we process from aproprietary data that we process from a proprietary survey. And we were willing to walk out on the street and sell it to people. I would be awfully red in the face because it is genuinely is that level of data which is what we consider the most proprietary trade secret. Of course I have distinguished between raw field data, initially processed data, from group seismic surveys, and it would have to reach compromise. But it is at this other level of data that we seem to have the most problems.

Number 0134 Mr. Haynes: I could understand why they wouldn't want to sell it to another company. But the state is not bidding at the sale. The state sells the resources.

Number 0135 Senator Ray: That's the point I can't get. They keep referring to this as a trade secret. I can't get any other analogy where somebody else comes in and uses somebody elses property in a secret process and won't tell them what it is. I don't understand

that. The land belongs to the state. It doesn't belong to the oil companies, and whatever you are doing on there, we are allowing you to do it. And if we were make a permit that says, unless you are willing to do this and that, you cannot do it. Do we have that right, do we have that constitutional right? Well as far as I'm concerned we can keep on doing it.

Number 0145 — Ms. Robinson: I would add that this data is not even available not even available to many employees in our own company. And those that it is available to is only under very guarded conditions. So I am very sincere in saying that this data is important.

Number 0149 — Mr. Haynes: That is why we back establishing a Class B felony for willful disclosure, that is why we back bonding third party contractors, and why we have given a standing offer to all oil companies to come view our facilities for holding this data and if they have suggestion for improving the security, we will do our best to act on it. We agree that confidentiality is extremely important.

Number 0154 — Senator Parr: In the proposed amendment from the Department where they are using this credit provision here. What kind of policy are we possibly looking at Mr. Haynes. Do you have an estimated fiscal note on this of any kind.

Number 0158 — Mr. Haynes: The estimated fiscal note would probably depend on the sales that come within the fiscal year. It is going to be expensive. We are talking in the millions of dollars annually in order to acquire this data. This of course would be 50% of the states per rate or share. Our capital budget appropriation this year for seismic was what $7.9 million originally and the cost of seismic data acquisition will probably go up over time. So it is a considerable amount of money. Nevertheless considering the amount of money that is also at stake at an oil and gas lease sale. I can understand why some people believe that the state should pay for that. At least pay for part of it. Again it is a philosophical question of which we freely admit that there

is two sides and we are willing to accept this approach as well as just the existing one.

Number 0171 — Senator Parr: Mr. Haynes I thought you said something of the figure of $2.5 million a while ago, earlier in your part of your presentation. I am wondering if that is the approximate amount that you estimate the 50% cost to the state?

Number 0173 — Mr. Haynes: No sir, this year of that $7.9 million because of capital budget reductions. We are $3.5 million short in order to just purchase the data to have that fourth Beaufort Sea sale. Now if you adopted Exxon's amendment there and we only had raw field data shot by the company we would have to go through substantial additional process, and hire employees and all that. So of the $3.5 million that we would save with this amendment we would have to spend $2.5 million of it back. So it wouldn't do us any good.

Number 0180 — Senator Parr: Let me rephrase the question. The amendment the Department submitted, if that were to be adopted, then what is the ball park guess as to how much money we are talking about. You know, this coming fiscal year, I'm not expecting 5 years to the future. But you must have some estimate of what it would cost in the coming fiscal year.

Number 0186 — Ms. Mary Holleron, Department of Natural Resources: I will have to get back to you Senator Parr, I don't want to make a guess on something like this.

Number 0188 — Senator Rodey: Is there any further questions for Mr. Haynes. Thank you very much. What is the committee pleasure on this bill, would you like to make final decision on the bill and amendments in the morning, giving members the opportunity to look that over.

Number 0192 — Senator Ray: In fairness to the oil companies, I would move their amendment.

Number 0193 — Senator Rodey: O.K. The amendment has been moved all those members who are in favor of

the amendment raise your right hand (at which time Senator Anderson raised his hand, and Senator Rodey raised his hand). All those opposed (at which time Senator Ray raised his hand, and Senator Parr raised his hand). The amendment fails 2 to 2.

Number 0198 — Senator Ray: I don't have any more questions. Maybe perhaps the other members have.

Number 0199 — Senator Rodey: The Administration has an amendment as well.

Number 0200 — Senator Parr: That's why I was asking.

Number 0200 — Senator Rodey: Would you like to hold that until the morning when you have your information.

Number 0201 — Senator Parr: Information of cost. It appears to me on the part of the Department to go in the right direction toward the companies. I kind of think that the confidentiality thing is being over played here and I understand how valuable it is to the companies. But if other companies other than Exxon were willing to sell this stuff and take their risk of the confidentiality. I have a little trouble in believing Exxon's data is that much more confidential than ARCO's or somebody elses. I think the confidentiality thing is a little bit over played.

Number 0208 — Senator Rodey: Fine, we will lay this bill on the table, and take this bill up in the morning. I would like to recess for approximately one minute.

Number 0211 — Barry Jeffery Stern: I am Assistant Attorney General with the Alaska Department of Law in the Criminal Division. I am speaking today on HB 473. I should state that I have just this morning discussed this bill with the Governor and the position I am, is going to be stated reflects not only the Department of Law's position on this legislation but also the Governor's. Our position is that we oppose this bill as it is presently drafted. Let me make it clear that we that there should be some changes to our current waive treating people who commit sexual assault in the first degree. As well

as there should be some changes. Just generally in the way we treat people who commit Class A felony offenses. We think that the approach in this bill however, presents a number of legal problems and we certainly do not think that it is comprehensive as it could be. I have provided the committee with a letter to Senator Rodey signed by myself and the Chief Prosecutor Dan Hickey. Which goes into detail of one of our problems with the bill. Let me just summarize it very briefly. In the first hand we believe that sexual assault in the first degree is properly classified as a Class A felony, we don't feel that the conduct described there is really comparable to homocide, killing someone, intentional killing, or kidnapping. We also feel that to the extent that we need to limit the judges discretion in sentencing a person who commits sexual assault in the first degree. That discretion is limited when we talk about a repeat offender. But when we talk about first time offender, it's not limited and we believe that it should be limited through....sentencing. Thirdly, despite the claims of some of the supports of this bill. That it increases sentence for rapist. We feel that when we are dealing with repeat offenders, in other words a person that commits two prior felonies now commits rape. This bill actually provides for a lessor sentence. A lessor mandatory minimum sentence than would be imposed today. And we feel that that is the significant problem with the bill. Finally the bill creates almost a page of statutes dealing with multiple unclassified crimes. For example if a person commits an intentional murder. I'm sorry, kidnap s the victim and then commits an intentional murder. The bill specifies a mandatory sentence. We simply think that is unnecessary in light of the existing judicial sentencing practices in which the average sentence for murders is life and we don't feel that that has been abused by judges in the past. We don't see any reason for those provisions. In conclusion we do find it somewhat difficult as we point out in the letter to oppose this bill. Especially when supporters argue that it is necessary to clamp down on vital crime. We just don't feel that it accomplishes that

result, particularly in an average sentence that is imposed today for rapist is the same or higher that is required by this bill. We drafted a proposed Committee Substitute that we feel deals more appropriately with the problem. In fact, we feel that it deals very appropriately with the subject of all class A violent crimes. We are talking about the most serious offenses, what we've done in our proposed Committee Substitute is specify a presumptive sentence of five years for any first offense Class A felony. We are talking here about sexual assault in the first degree, we're talking about assault in the first degree, we're talking about armed robbery and that offense would be a five year presumptive sentence, if a weapon was used or serious injury caused that sentence would be increased to seven years. Again, let me state that that's the position of the Governor. We feel that there should be some changes we just don't feel that this vehicle ... that this bill is the way to go about it. I'd be happy to answer any questions.

Number 272 — Senator Rodey: Are there questions from members of the Committee?

Number 273 — Senator Ray: You would say the five year hard time.

Number 273 — Barry Stern: Yes, that's correct under the five year presumptive sentence the judge would have discretion to increase that up to twenty years for aggravating factors and decrease it to two and a half years for mitigating factors. Once that was done though there could not be procreation or there could not be a suspended imposition of sentence and the offender would not eligible for parole.

Number 278 — Senator Ray: Then you're saying, Mr. Chairman, if I might.

Number 278 — Senator Rodey: You can continue.

Number 278 — Senator Ray: Then you're saying that the judge can't let them off like they can. That's why you specifically mention that they can suspend it under AS 12.35.085.

Number 280 — Barry Stern: We would prevent that from occurring.

Number 281 Senator Ray: Not too bad.

Number 282 Senator Rodey: Just fine, there's no question about that.

Number 283 Senator Parr: The Department then is still pushing this presumptive on first offense, is that right.

Number 284 Barry Stern: Well let me, in the letter we point out that we feel strongly that presumptive sentencing should apply to all first offenders for purposes of this proposal, however, we have tried to make it as limited as possible and only applied Class A felony offenses. And when you really look at the issue, Senator Parr, currently first offense Class A felonies are subject to a presumptive sentence of I believe, apparently I sometimes lose track, I believe it is six years if there is a weapon used or serious physical injury inflicted. What we've done is we've specified a five year presumptive sentence for ordinary Class A felony and then we've upped the six year to seven year if a weapon is used or serious injury is inflicted. And again, we feel that that approach is, it's certainly, I know that this Committee is very concerned about addressing the area of violent crime and instead of singling out one crime and treating totally different that any other, basically any other offense in the Criminal Code, you'll be dealing with the subject as a integrated whole, consistent with the Criminal Code.

Number 299 Senator Rodey: The Committee is always in favor of adjusting the Rubic's cube with a uniform fashion.

Number 300 Senator Ray: Now, so I don't get mixed up here, first degree is more serious than fourth degree?

Number 301 Barry Stern: Yes, that's true.

Number 302 Senator Ray: An the, I know that you gave testimony in the House to the original bill and their Committee Substitute and come off and look like they lessened all the degrees from third to second. Could you tell us why?

Number 306 Barry Stern: Yes, I'll explain that, it

looks like it's lessened but it isn't. What they have done is sexual assault in the first degree can be committed four different ways. What the Committee did was to take the first two ways it could be committed and call that sexual assault in the first degree. The other two ways that used to be sexual assault in the second degree and they provided a felony penalty for that. And every other crime had to be adjusted to a lower degree but they kept the same penalty for...

Number 316 — Senator Ray: In section five of the original bill this is a person suffering from mental disorder and defect. Did they lessen that penalty.

Number 317 — Barry Stern: No, I'm sure that they didn't. They changed the titles, Senator but they did not change the penalty applicable.

Number 321 — Senator Ray: You get sexual assault in the third degree, why if you have a threat of death or physical injury... It would seem to me, this is my own philosophical idea as it ... A person who is a mentally defective and can't take care of himself is old and confined to a bed that cannot take care of themselves and somebody comes in and rapes them it seems to me that that is a more serious offense than someone holding up their fists and saying that if you don't submit I am going to knock the hell out of you. That's putting them in physical danger and it seems to me that the person that's mentally unbalanced or physically incapable of protecting themselves, just physically. It seems to me that that one should be a higher offense than just someone holding up their fist and saying that they are going to strike if they don't submit.

Number 335 — Senator Rodey: That would be considered an aggravating factor.

Number 335 — Barry Stern: It would and also the Senate Judiciary had already passed the bill increasing the penalty for that not as high as you wanted it but they, you have passed that bill. I think it's unfortunately still sitting in Senate Finance as a result of that fiscal note.

Number 370

Senator Rodey: Let me ask a question along Senator Parr's line. It has been raised, at least in the legal profession that is the concern that by increasing the ... 473 would actually result in fewer convictions.

Number 374

Barry Stern: Well, I don't address that in my paper. I know that it has been addressed by representatives of the Network on Domestic and the Council. I think that the concern is this that juries learn what the sentence is and when they are faced in a situation where it is a sexual assault under our law but there is no serious injury or weapon used there may be a tendency not to want to convict as a result of knowing that the person faces a life sentence. Another concern that has been raised and is not addressed in this analysis is the fact that if a rapist knows that he is facing the same maximum sentence for rape as he would be facing for killing the victim there is a fear and it can't be documented, but there is a fear that may be an incentive to the rapist to simply kill the victim. You're eliminating a critical piece of evidence there, that is a fear and we don't address, I think the public defender did, but we think that fear is a justified one and we understand why people would be concerned about that and that's one of the reasons we don't want to raise it to ninety-nine.

Number 393

Senator Ray: That's one the second or third offense.

Number 394

Barry Stern: No under the bill that is before you today, a person who goes out and commits a sexual assault in the first degree faces a ninety-nine year.

Number 396

Senator Ray: I'm not talking about the Committee Substitute.

Number 397

Barry Stern: The Committee Substitute still remains a twenty year maximum sentence. He faces a five year presumptive for the first offense, a ten year for the second and fifteen for the third.

Number 400

Senator Ray: On the second offense, under the Committee Substitute, Mr. Chairman...

Number 401

Senator Rodey:You have the floor sir.

Number 339 — Senator Ray: Where they send it.....somebody presumes that they are going to have to have more jail cells in order to...

Number 341 — Barry Stern: Two bits

Number 342 — Senator Rodey: Senator Parr:

Number 342 — Senator Parr: What is the situation at present with CS for HB 473 didn't just simply die here. What would happen? What is the situation at the present. The reason that I am asking the question is that my understanding was that this wasn't our problem, this wasn't the severity of the punishment. Our problem is catching the people who commit the crimes. It just doesn't seem to make any difference as far as catching the people in the first so can try them and send them to jail. What would happen if this bill didn't die just right here today?

Number 351 — Barry Stern: If this bill died right here without any action taken the penalty structure for sexual assault in first degree would stay the same in terms of a twenty year maximum sentence. We don't change that under our Committee Substitute. The only difference would be it's how do you deal with the first offender. In other words, no prior felony conviction. Today the judge may pose any sentence from zero to twenty years on that person except if any firearm or serious physical injury was inflicted, then the judge is limited to six years. What this really does is that it says if you go out and commit a rape and you had no prior felony offense you didn't use a weapon, you're presumptive sentence is five years, and it also applies that to all Class A felony offenses. So, it couldn't create any real problems.

Number 366 — Senator Parr: In terms of how this bill passes or dies doesn't touch any more people, does it.

Number 368 — Barry Stern: No, we don't really try to say that we are going to catch any more people by increasing the penalty or making it a presumptive sentence.

Number 402 Senator Ray: Under the second conviction, ten years with no suspension. Then that's what the fear is that he might kill the person rather than do it.

Number 408 Barry Stern: No. No, Senator, I was speaking to the proposal from the House and that says for any rape you're talking about a 99 year sentence the same penalty as murder and that's when our concern is present when the rapist is facing the same maximum penalty.

Number 413 Senator Ray: Isn't the same concern there. Under second conviction, he's got ten years, he knows he going to spend ten years hard time.

Number 415 Barry Stern: Yes, but under...if he kills the victim he's facing 99 years, you know for murder.

Number 417 Senator Ray: But how many are serving?

Number 418 Barry Stern: The average sentence that is imposed, Senator Ray, for murder in the first degree in the State is life. The Parole Board under the new Criminal Code cannot consider to parole the person to 33 years into the sentence.

Number 423 Senator Ray: So don't forget that Charlie, remember that.

Number 423 Senator Rodey: Senator Parr.

Number 423 Senator Parr: I don't think the concern of the murder of, the chance of murder is really an unrealistic concern because a rapist in such a case has nothing to lose there's 99 years either way and he is going to remove the primary witness against him and maybe probably the only witness and I don't think that that is an unrealistic concern at all. I certainly think that this bill that came from the House hasn't been thought through the way it should have been.

Number 432 Senator Rodey: Are there further questions for Mr. Stern?

Number 433 Senator Ray: Is the Committee Substitute as rationally stiff as the the original bill.

Number 435 Barry Stern: I think we can argue that the

Committee Substitute I haven't, well uh, I can say that the Committee Substitute is a presents a rational sentencing scheme consistent with the Criminal Code that provides appropriate sentences for all violent crimes and addressing the problem of violent crime is much more comprehensive than the proposal and it's stiff that's correct. I some ways, for repeat offenders, I feel that it is stiffer than came out of the House.

Number 446 Senator Ray: Are we willing to hear some pros and cons of it.

Number 447 Senator Rodey: Yes, Representative from Rep. Barnes' office we give permission to testify and the Network to testify also. Are there any question. Commissioner did you with to testify. Please join us sir.

Number 450 William Nix: My name is William Nix, I am the Commissioner of the Department of Public Safety and the Chairman on the Council of Domestic Violence and Sexual Assault, I am here to testify in opposition to HB 473. I agree with the comments made by Mr. Stern, concerning the problems associated with trying to change or to mess up the sentencing structure that is pretty.. the basis is pretty well laid out in the Criminal Code, it also gives us some concern that you may be placing in the long run if such a bill as this is passed an undue burden on the Department of Law to act as a role of a gatekeeper. More so that they do now because of the types of sentences that this bill calls for. I feel and certainly we can agree that the responsibility for clearly defining these sentences rest with the Legislature so then that kind of a thing isn't necessary. We really don't have much more to say than we support the Committee Substitute, we think it is a more rational approach. I would like to reinforce again our concern about the possible increased harm to the victims because of the harshness of the sentence and nothing to show that's a fact and a concern of the Council and the Network and by everyone involved.

Number 484 Senator Rodey: Any questions for the Commissioner? Senator Parr.

Number 485

Senator Parr: Commissioner, the primary obligation of course we all have is to protect the general public and protect the public safety. I guess what disturbs me is although there may be a deterrent effect by stricter penalties. That's seems to be our primary thrust in trying to protect people the only thing I know that we have done essentially to help catch them in the first place is to say you went to trial and then the fingerprint thing that is going through the Senate. How would you go about catching more people (indisc.) You know if you catch one out of ten and actually bring them to trail and that means that's not really what we really do I am just giving you the fact that we have a tremendously tough penalty scheme that's not helping the problem and I don't see that really helps much with our general public safety problem except we can get the message and whatever deterrent effect is has.

Number 503

Commissioner Nix: What we know is that sexual assault cases that are originated in the smaller communities in the State are generally solved the majority are solved, a lot of course depends on the physical evidence available, you know, provided by the Department of Law. In some of the larger areas you do have the other Agencies.

Number 509

Senator Parr: In all the larger areas you obviously in the village you are much more likely to know who the person is.

Number 512

Commissioner Nix: In the larger areas as is experienced by any large cities in the United States maybe even in the world there is not a lot of physical evidence available at the scene and a lot of the evidence is destroyed by the victim because of a lack of understanding to absorb the evidence and the physical evidence that she might have on her body and so on. A lot of this can be improved through intensive education program and I might point out that a lot of this information is presented and passed on to the Women's resource Center and the kinds of programs that are in cooperation with the Department of Public Safety and additional training for additional police officers and how to obtain this evidence which is... We have to have the physical evidence as much

as you have to have the identification of the person. I don't know what kind of legislation we could write to clear this up.

Number 531 — Senator Parr: I wouldn't (indisc.) the Department. I just want to find something which directly help you to catch more.

Number 535 — Commissioner Nix: I would certainly share any ideas I had.

Number 536 — Senator Ray: You don't have to worry about that Commissioner, if you knew the answer to that you'd be the head of FBI or (indisc.).

Number 539 — Commissioner Nix: (Indisc. comment).

Number 540 — Senator Rodey: Are there any further questions for the Commissioner?

Number 541 — Senator Ray: You got to share with the state under the proposal we did had here.

Number 543 — Commissioner Nix: Yes.

Number 542 — Senator Rodey: Senator Parr.

Number 545 — Commissioner Nix: It has to do with the fingerprint system which I think is a real valuable tool for law enforcement agency, but I don't believe we should be left feeling it is a panacea for solving crime. It really isn't.

Number 550 — Senator Rodey: It is only a tool, one more tool.

Number 551 — Senator Parr: The only thing I can think we have done in recent years is to try to help you get more able to solve these.

Number 555 — Senator Rodey: Thank you, Commissioner. Well we have heard from the Chief Prosecutor who feels that the bill should be opposed, we have heard from Public Safety, the troopers who feel that it should be opposed. We have people who prosecute and people who apprehend and previously the network has informed me that they don't approve the bill and they represent the concern of the victims certainly.

Number 564 — Senator Ray: They seemed opposed to it.

Number 564 — Senator Rodey: I don't believe so. Do you have a copy of the proposed Committee Substitute presented by the Department of Law. I would like to call Julia Coster from Rep. Barnes office who would like to speak on behalf of the bill.

Number 570 — Julia Coster: (Indisc. somebody) opposes it, I guess I represent people that you represent, the public, that have supported this legislation.

Number 587 — Senator Rodey: Mr. Stern, the comment is made here that the average is fourteen months in Alaska, certainly that's an error.

Number 590 — Barry Stern: It was reported to be that on the floor, Representative made that comment that this bill is necessary for the average sentence is fourteen months. Check with Judicial Council statistics and it's five years.

Number 597 — Senator Ray: It is somebody's law journal...(indisc.)

Number 601 — Senator Rodey: Miss Coster, you have the floor.

Number 602 — Julia Coster: For the record my name is Julia Coster, and I work for the House Judiciary Committee and I am representing Rep. Barnes who is home in bed and very ill today. She asked me to come in and give a (indisc.) and give a speech that she has prepared on this subject and answer any questions that you might have.

Number 610 — Senator Rodey: I would request that the speech be placed in the Committee Records so we can dispense with the speech because I have read it before and basically Rep. Barnes comments on the floor. Let me ask one question, the one chief concern is the fact that under the House version of the bill there would be a significant incentive for an assailant to murder his victim or victims. If, because, the penalty would be less then there would be a lesser chance, presumably, of being caught in the crime. What is the response to that argument?

Number 626 — Julia Coster: Like you say, it is just that, an argument it is something that can be

brought up, I guess, to oppose this bill. There has been no proof of the argument on either side it has just been something that has been said. This is a possibility but it could happen. I guess until.

Number 634 — Senator Rodey: Of course, it is difficult to conclude that penalty of any kind actually deter criminal conduct either that it cannot be proved conclusively. We deal with different levels of probability in the Law and in Social Science in general. Senator Ray.

Number 640 — Senator Ray: In the event, in the speech here the key question that arises at least in my mind the statement by Rep. Barnes that she has it for inspection a petition signed by over 2,000 Alaska residents calling for minimum mandatory sentences for sexual assault in Alaska. We know that of course 773 does but does the proposed Committee Substitute establish those.

Number 653 — Senator Rodey: Mr. Stern, you have the floor.

Number 654 — Barry Stern: As I pointed out in the paper I presented you with, it does establish mandatory minimum sentences for first offense, they already exist for repeat offenders and that's something else that I wanted to clear up in the paper. So it establishes a mandatory minimum sentence for first offenders. The problem with the bill that we pointed out is that for repeat offenders the mandatory minimum sentence is reduced by 50% by the bill that came out of the House.

Number 664 — Senator Rodey: Miss Coster.

Number 665 — Julia Coster: I agree that.....I'm sorry.....

Number 667 — Senator Ray: .....that it reduces, that your bill reduces the crime.....

Number 668 — Julia Coster: No, that's why I would like to make a few comments on the bill and then answer any questions. I hadn't seen the letter that Mr. Stern wrote until just a few moments ago, but just as it happened I had also gathered some statistics from the

Alaska Judicial Council on first time felony offenders, sexual assault offenders and all sexual assault offenses. You have these statistics in front of you right now. As you look at the bottom of the first page you will see that the average term for a first time offender, which commits a sexual assault in the first degree is 3.5 years. This is a first time offender. And then, the third thing down is 5.8 years for all offenders. It is not exactly correct what Mr. Stern has in there, however on a medium with all offenses that is correct. But when you break it down to first time offenders and then all offenders it is a whole big difference. 473 is...I guess what you can do is you can look at your statistics and look at you average sentence for each sentence. We have 9 out of 21 cases that were sentences under three years for sexual assault in the first degree, 9 out of 21 under three years. One case received zero sentence , one received six months. They're are going to have about 5, 4 or 5 that received three years.

Number 709 Senator Ray: Are all these juries trials or they...?

Number 710 Julia Coster: Usually these are... these were all cases that were convicted and sentenced by our judges.

Number 714 Senator Ray: These are all judge trials and none of them are jury participation?

Number 715 Julia Coster: Some of them went to jury, I don't which ones went to jury and which ones didn't but they were all sentenced by a judge.

Number 716 Senator Rodey: Mr. Stern, were any of these judge trials ?

Number 718 Barry Stern: I assume that maybe ten percent were judge trials, and the point is that her figures are... we don't take issue with those figures that she come... that you point out, in terms of some of the sentences that have been imposed. The thing that we want to do in our bill of course is to specify 5 year presumptive sentence for that offense.

Number 726

Senator Rodey: What will happen in some of the close cases is that..... (Tape Ends Here)

Number 3/0002

Senator Rodey: Do you understand what I am saying?

Number 0003

Julia Coster: No I really don't, I know that I worked on this case, this study itself and each one these sentences had been given approximately a year to go to an appeal court or whenever and these were the final sentences on each one of them. I guess the thing that makes it so important is that there has to be some sort of a minimum mandatory sentence, there just has to be because the judges have abused the discretion and you can see it right on here and their giving less sentences than they should be. There's also been mentioned that there really was no need for their multiple sentence section of the bill and I just wanted to call your attention to one case on the second page. Where we have Senate number three. Sexual assault in the first degree and kidnapping and assault in the second degree. Under 473 he would have received a minimum mandatory sentence of fifty years. Here he received fifteen years. One unclassified felony, one class A felony and one B felony so there are whats been some abuses by (sic) that need to be addressed.

Number 0020

Senator Rodey: Are there questions from those of the committee?

Number 0021

Senator Parr: Is it your understanding that all rape cases are lets say no weapon no gun or anything. All rape cases are identical and people should receive the same sentence.

Number 0025

Julia Coster: No

Number 0026

Senator Parr: Then you make a distinction between the two cases where a women appears to be walking home from the bus to her house or whatever and passes somebody by and waves and the case with two people in a bar both of them pretty well liquored up will wind up in a pick-up (sic) and then she decides to yell rape, can you make a distinction between two people like that? The reason I'm asking the question, I'm not trying to

put you on the spot but I wondered if circumstances the kind I'm talking about might have had some play in the kind of Senators who have (sic) if you don't allow for the differences the kind I just described and of course there is only two of maybe of hundreds of different circumstances that could be (sic). You take away the judges discretion and of course the judge cannot allow on this nonsense the different factors. Has that been considered by the House before this bill came across?

Number 0038 Julia Coster: I think it has and I think the reason why this bill originated was from what seemed to be an inordinate amount of sentences that were below what the public felt should be the proper sentence. I don't know, I guess the people that sign our petitions that have been writing us and sending us telegrams.

Number 0043 Senator Parr: I bet I haven't had five letters from home from my district at least on this subject (sic).

Number 0046 Senator Rodey: Senator Ray you can have the floor.

Number 0047 Senator Ray: The test that the chairman was talking about is that two thousand people wanted it but four hundred forty-eight thousand that didn't. What I think that Senator Parr was trying to get at is there's a difference of opinion a philosophical difference of severity of penalties where the severity of a penalty for murder, if its capital punishment, that serves as a (sic) against murder because of the chances it might happen you might be killed or you might be put to death. There's another philosophical idea that's called by some people (sic) we're just talking about an average rape that has no aggravated ill, serious physical damage. If you commit that crime then there's no getting around it, your going to go to jail for three and a half to five years. Whatever the penalty is. Its just like a assembly line. You don't pass go, you don't do anything else, you go to jail. And you know what time you are going to jail for. These are the two different types. Now what do you believe in, do you think there should be discretion

on litigating circumstances, or do you believe that there should just be automatic go to jail for 3 1/2 years or 5 years of what it comes down to. What is your philosophy?

Number 0068 — Julia Coster: I think that what this bill represents is that indeed there should be a minimum mandatory sentence for this particular fine. Because it is particularly, probably more particularly horrendous than most other crimes such as a burglary, assault in the second degree, this is a crime against a person.

Number 0074 — Senator Ray: Well the proposed Committee Substitute more or less does that, just to make it an automatic term.

Number 0075 — Julia Coster: The one that the Department of Law has just submitted?

Number 0076 — Senator Ray: Yes.

Number 0076 — Julia Coster: Well I haven't even looked at it yet, I have no idea, I have never seen it before.

Number 0078 — Senator Rodey: Are there any further questions from Ms. Coster.

Number 0079 — Senator Ray: I want to commend her for having the patients for listening to this guy.

Number 0081 — Senator Rodey: Is there any other comments, thank you very much Ms. Coster. Next I would like to call Ms. Robinson from the network.

Number 0084 — Caren Robinson: For the record I am the President of the Network on Domestic Violence and Sexual Assault. We are in agreement with the department of law and Commissioner Nix. I wasn't going to spend very much more time except that. They did cover our concerns over the fact of a possibility of victims being killed, the possibility of juries not convicting. I have been around now for 5 years, and at this time we have three cases that are coming to trial and/or in the process right now in Juneau. I have talked to jury members after three rape trials about

attending here in Juneau. I have some real strong feelings that these cases are not just clean cut cases. The cases that are clean cut we usually don't find a rapist. The last thing that I would like to state is that I would really like to see, possibly added in, the end of Barry Sterns proposed substitute that the committee consider the possibility of adding in also that mandatory treatment would have to take place. That is the only thing that I would like to see possibly added in.

Number 0098 Senator Rodey: Caren this was proposed on the House side or was it a proposal that wasn't never fully passed for treatment.

Number 0099 Caren Robinson: I heard rumors that something passed under the parole bill yesterday, or it was added or it passed.

Number 0102 Mr. Bruce: It was passed under the parole bill yesterday, I don't know what happened with the reconsideration today. But they tacked it onto 327.

Number 0103 Senator Rodey: SB 327?

Number 0104 Mr. Bruce: Yes that is correct.

Number 0105 Senator Rodey: If there is no major changes in the parole bill the Senate and the members of this committee find it acceptable, I certainly have no complaints. I am familiar with the language.

Number 0106 Senator Ray: On the first offense only, after that we are.....

Number 0107 Senator Rodey: Do you think that the treatment is wasted after the first offense there.

Number 0108 Senator Ray: I am afraid so, because if he comes back the second time, I don't know what he would be treated for. If he didn't get the message the first time, he isn't going to the second time.

Number 0110 Ms. Robinson: I think the other thing is that, within the HB 473, it's been looked at the fact that it might be a deterrent to this crime and I think what people need to

keep in perspective is that sexual assault is basically a behavior impulse and that rapist are not going to quite raping just because they might go a year to jail for ninety-nine years. I think that is something that we need to look at and understand that it is a behavior problem and we know that 2/3's of all rapists were sexually assaulted as children and that again, I really want to impress upon people that I think that our primary prevention is to really start education and treatment for children who have been sexually assaulted and start dealing with their problems at an early age when this occurs to them and get them to be identified and start coming out and let us know what is happening.

Number 0121 — Senator Parr: Mr. Chairman I wonder if Ms. Robinson maybe had a slip of the tongue. It really isn't impulse. The latest research shows that it is not an impulsive act. Further it isn't really a sexual offense in the standpoint of a rapist, it is act to gain power, I guess is one way of saying it.

Number 0130 — Ms. Robinson: What I meant by that is that I went to Western state and had an opportunity to sit in a room with 15 rapists and ask them every question I wanted. They made reference to the fact when they decided and had planned out that they were going to sexually assault they were going to do it no matter what.

Number 0133 — Senator Parr: It wasn't impulse thing.

Number 0135 — Senator Rodey: What is the pleasure of the committee with regard to the two proposals which we have before the committee.

Number 0136 — Senator Ray: I move that we adopt the Committee Substitute as a Committee Substitute.

Number 0137 — Senator Rodey: Senator Ray has moved the Department of Law proposal as a committee substitute. Yes, Senator Parr.

Number 0140 — Senator Parr: I object, I have not had any time to go through it, I know what Mr. Stern said in a matter of a few minutes, but the 2 1/2 page bill, you have made some significant changes and I would like to have

time to look it over.

Number 0142 — Senator Rodey: We will be meeting at 9:00 in the morning and....Yes Senator Ray.

Number 0142 — Senator Ray: I agree with Senator Parr, but to save time you must be understanding and your a pro, you have been around here, you know that this bill isn't going to pass. It's going to go the free conference, and if we spend all our time trying to fool around with it, that's time wasted. Why don't we get it to the real people that is going to determine this in free conference, and let them do it rather than us.

Number 0147 — Senator Rodey: The point of the matter is well taken, this bill moves to the floor if there are changes that you feel should be made I will bring those changes to the floor on behalf of myself or the committee.

Number 0151 — Senator Ray: No offense Charlie.

Number 0151 — Senator Parr: I am not questioning the fact that the proposed Committee Substitute is better than bill that came from the house. I just would like to look it over, and for the same reason I objected to the bill a while ago about the fiscal thing, I had not seen it before and therefore object.

Number 0154 — Senator Rodey: I would like to move as soon as possible. The bill is laid on the table. The Judiciary Committee is adjourned until 9:00 a.m. tomorrow morning in the Butrovich room.

C E R T I F I C A T E

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)

I, EVE FOX, a Notary Public, duly commissioned in and for the State of Alaska, do hereby certify that the foregoing Record of the May 12, 1982 Senate Judiciary Committee proceedings relating to the lands issue HB 2, HB 34, HB 548, HB 473, HB 848, and HB 621 were recorded by the Senate Judiciary Committee and thereafter was transcribed by the Senate Records Staff under the direction of the Senate.

I further certify that the transcript consisting of pages 1 to 52, both inclusive, is a full, true and correct Record of the proceedings, considering the quality of the tape and the information furnished to me.

I further certify that the Senate Records Staff is not a relative of any of the parties, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of May, 1982.

Notary Public, for the State of Alaska
My Commission Expires: My Commission Expires March 25, 1985

SENATE JUDICIARY
STANDING COMMITTEE
April 13, 1982
9:00 a.m.

Members Present: Senator Pat Rodey, Chairman
Senator Nels Anderson
Senator Charlie Parr
Senator Bill Ray

Members Absent: Senator Don Bennett

COMMITTEE CALENDAR

HB 34 "An Act requiring the preparation of a course transfer ability guide covering courses offed in post-secondary institutions; and providing for an effective date".

HB 2 Amended Title "An act relating to land; and providing for an effective date".

HB 548 Amended Title "An Act providing for legal services in civil cases for persons who are financially unable to obtain legal counsel".

HB 473 "An Act changing the classification of the punishment for certain crimes against the person".

HB 637 "An Act relating to the regulations of taking, purchase, or sale of certain fishery resources; and providing for an effective date".

WITNESS REGISTER

Mr. Haynes, Deputy Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811
465-2400
Position Statement: On HB 548 explained the amendment only deals with a credit against taxes in the range of $2 to $5 million dollars per year range average over a period of time. On HB 2 explained that of the 3 and 1/4 million acres designated; 3 million 1 thousand acres is for reindeer grazing lands, and 200 thousand acres has been rail belt, road map work, etc.

Mr. Bruce
Judiciary Committee Assistant
c/o Senator Rodey
Pouch V
Juneau, Alaska 99811
465-3717

Position Statement: On HB 34 explained the recent chain reactions of the bill. On HB 548 explained that DNR had amendments to the bill. On HB 2 explained that DNR had submitted language that referred to clearing and cultivating of the land.

PREVIOUS ACTION

HB 548 — The bill is in reference to seismic information obtained by the state, the amendment is in reference to credit against taxes. Senator Ray made the motion to move HB 548 from committee with the credit against taxes amendment. Senators Parr, Rodey signed do not pass. And Senators' Ray, Anderson signed do pass with no recommendations.

HB 34 — The bill is in reference to University of Alaska Trust lands. Senator Ray moved to have the Senate Resources letter of intent attached to the bill when passed. Senator Parr moved to pass HB 34 from committee with letter of intent. The bill passed from committee.

HB 2 — The bill is in reference to Homestead Limited Entry lands. Senator Anderson proposed for committee consideration an amendment by Senator Kerttula that is in reference to establishing state grazing lands. Senator Ray made a motion to move the amendment and the bill out of committee.

HB 473 — The bill is in reference to the change of classification of certain charges to a person, more commonly known as the rape bill. Senator Ray moved to adopt the amendment of the committee substitute. Senators Rodey, Ray and Anderson voted to adopt the committee substitute and Senator Parr voted not to adopt the committee substitute.

ACTION NARRATIVE

Tape #0044
Recording
Number 0001

Senator Rodey: The regional portion of the bill which is really the University of Alaska section endorses the settlement between the state and the University which is now HB 34. It is exactly the language which the Senate passed previously. I did check with the University and it is still in it's exact state. Ms. Tutten did you examine HB 34 to ensure that all portions of the bill were exactly as required by law.

Number 0006

Ms. Tutten: No, Senator I have not seen a copy of that bill.

Number 0007

Senator Rodey: Mr. Bruce, they are the same.

Number 0007

Mr. Bruce: Mr. Chairman, they are the same.

Number 0009

Senator Rodey: Yes, they are exactly the same as the....

Number 0010

Unanimous: Does that mean that the language that you may adopt today is exactly the language that is passed out of Senate Resource Committee or on the House or Senate floor.

Number 0011

Senator Rodey: Yes it is exactly the same. It is the Resource language.

Number 0012

Senator Parr: I move to pass out the Senate Committee Substitute for HB 34.

Number 0014

Senator Rodey: The motion has been made to pass HB 34 from Committee with individual recommendations. Is there any objections to that motion. (hearing no objection). The bill is passed from the Committee with individual recommendations.

Number 0015

Mr. There was a Senator Resources Committee letter of intent. And I don't know whether the committee examined that one or not.

Number 0016

Senator Ray: I would move also the Letter of Intent along with the bill.

Number 0017

Senator Rodey: The motion has been made to pass the Letter of Intent along with the bill, is there any objection to that motion? (hearing no objection). The Letter of

Intent will go along with the bill.

Number 0027 — Senator Rodey: Next I would like to take up House Bill 548. This is the seismic data portion of the House bill. This is the amendment proposed yesterday by Exxon was not included.

Number 0032 — Senator Ray: I move the Senate Committee Substitute.

Number 0032 — Senator Rodey: The motion is made that the Senate Committee Substitute. Does that ..... yes, Mr. Bruce.

Number 0033 — Mr. Bruce: Well the Department of Natural Resources had some amendment and the Committee added something else to it.

Number 0036 — Senator Rodey: This is the credits amendment. Is there any objection. Senator Ray's motion has been withdrawn. What is the preference of this committee for this amendment, this is the 50% credit amendment proposed by the Department. Mr. Haynes do you have any comment on this amendment?

Number 0039 — Mr. Haynes: The only thing that was asked yesterday that we couldn't answer at the time was were our financial exposure would be, if this credit provision passed. And we really can't tell exactly but we asked and they estimate probably it is somewhere in the $2 to $5 million per year range average over a period of time. It would be approximately what the state's exposure would be on the credit.

Number 0046 — Senator Parr: Mr. Chairman I gave this thing some more thought last night. I guess my position at this point is that that should be, the question of the data should be a prerequisite to requiring the permit and so that is what the CS does.

Number 0050 — Senator Rodey: Mr. Haynes your amendment does not effect the concept of leasing preconditioned upon being able to have access to data. Is that correct.

Number 0052 — Mr. Haynes: That's correct.

Number 0052 — Senator Rodey: The amendment only deals with a credit against taxes.

Number 0054 — Senator Parr: What I am saying Mr. Chairman is that my position is the precondition of getting the permit is furnishing the information, and I don't think to furnish it for $2 to $5 million dollars a year.

Number 0057 — Senator Rodey: You are opposing it sir, at any cost. That might be associated with.....

Number 0058 — Senator Ray: I repropose my motion to move it out.

Number 0059 — Senator Rodey: Senator Ray has moved that the bill pass from Committee with individual recommendations. All those people in favor of the motion.

Number 0061 — Senator Rodey: Did you wish to speak for the motion?

Number 0061 — Senator Ray: It's a lousey bill.

Number 0062 — Senator Rodey: I understand that Senator, I feel the same way. All those in favor of passing the bill out with individual recommendations raise your right, all those opposed. The bill is passed from Committee with individual recommendations. (Senator Parr signed do pass, Senator Rodey signed do not pass, Senators Anderson and Ray signed pass with no recommendations). Next I will like to take HB 2, homesteading limited entry. Mr. Bruce we have Senate Committee Substitute. We do not have a Judiciary Committee Substitute?

Number 0071 — Mr. Bruce: No we don't have a Judiciary Committee Substitute. I think everyone can follow the language that the Department of Natural Resources submitted taking care of the concerns that we went over yesterday about clearing and cultivation mandatory. And also there is an amendment in the file from Senator Anderson.

Number 0074 — Senator Rodey: Senator Anderson do you wish to speak on the amendment.

Number 0076 — Senator Anderson: This is an amendment that has to do with grazing lands proposed by Senator Kerttula. States notwithstanding the other provision of law state lands classified.....do you have a copy in front

of you.

Number 0078 Senator Rodey: Yes sir, I believe that every member has it in his file, second sheet right hand side.

Number 0080 Senator Parr: I might ask what's the amendment I am not quite clear on that.

Number 0081 Senator Rodey: I think I can answer the question, it is to perserve the grazing lands particularly in Senator Ferguson's area. I presume the Senator is concerned with the reindeer.

Number 0084 Senator Parr: That would be land under the exempt from homestead entry?

Number 0085 Senator Rodey: No it does not go that far. It only says that grazing land shall remain in its current category and shall not be classed as other kinds of agricultural lands would be. Except. Quite frankly it is very remote that land from that point on will be classified, that particular land would be classified as agricultural land.

Number 0089 Senator Parr: I wonder if the Department of Natural Resources has seen that amendment.

Number 0093 Mr. Haynes: Well, I think I understand the purposes is to obtain an existing state grazing lands classified for that purpose is apparently suitable for that purpose to obtain the current user classification for that intended into purpetuity.

Number 0094 Senator Anderson: Well as long as its used for that purpose.

Number 0096 Senator Parr: My question is that this section of the bill is talking about a homestead entry under AS 05.05.070 may not exceed 320 acres as agricultural. Does that apply to this too. Does this come under that category?

Number 0099 Mr. Haynes: Well my question is that approximately three and a quarter million acres of state land is currently designated and after this action is classified as grazing lands, 200 thousand acres of that has been rail-belt, road map work, what ever

area. About 3 million 1 hundred thousand acres is, out west, is for reindeer grazing. Since that is all recent T.A., that reindeer grazing land, I doubt if any of it has to be reclassified. It would be presently unclassified. However, if it is designated as being fairly permenently reserved for that classification, that sort of like establishing a state grazing area out there. And I assume that that would be considered the primary use on all of those lands. And that's the way we will have to manage them. So because it shall retain that current use, it is really hard to judge what constraints that puts on us management wise in terms of things like mineral entry for example, or extend this excluded land disposal in those areas. I'm not quite sure I understand what the intent is in terms of limiting the Department management in this.

Number 0118 — Senator Parr: Let me rephase my question differently. I'm sorry, it is early in the morning for me. Would a person who lived out in that area be able to get a 320 acre homestead of this grazing land for the purpose on this bill. Or is that bared from the homestead entry?

Number 0123 — Senator Ray: It wouldn't bar it if you wanted to keep that agricultural use for grazing land.

Number 0124 — Senator Parr: That is what I am trying to find out.

Number 0124 — Mr. Haynes: What this would do sir is, were we to open this area to promote parcel stakes for agricultural reasons for land disposals. Then they would be able to get 320 acres.

Number 0125 — Senator Parr: It would have to be for grazing right?

Number 0126 — Mr. Haynes: It would be an adverience title only which includes (sic).....

Number 0128 — Senator Rodey: Is there any other questions with regard to Senator Anderson's amendment. Is there objections to Senators Anderson's amendments.

Number 0130 — Senator Ray: I object to it.

Number 0131 — Senator Fahrenkamp: Are you leaving Ray with the best legislation covering suitable for grazing? If you leave that in, that's (sic).....

Number 0139 — Senator Parr: The intent is misleading, and not adopt the amendment, and give us all more time to think and to find out more about it. I am not saying that I am opposed to it, it's just that it's not exactly the clearest thing in the world.

Number 0144 — Senator Rodey: You would call your amendment with the intention of raising it on the floor for speed of the bill from committee. Every member has the amendment proposed by the Administration.

Number 0150 — Senator Ray: I move that amendment.

Number 0151 — Senator Rodey: Is there any objection of the adoption of that amendment by the committee (hearing no objection) the amendment is adopted.

Number 0152 — Senator Ray: I move to move the bill out with individual recommendations Mr. Chairman.

Number 0153 — Senator Rodey: The motion is made that HB 2 pass from committee with individual recommendations. Is there any objection to that motion. (hearing no objection) The bill is passed from Committee with individual recommendations. Next I would like to take up HB 473, to change the classification of certain charges to a person, this is the rape bill.

Number 0159 — Senator Anderson: Did we adopt the Committee Substitute?

Number 0161 — Senator Rodey: No sir we did not. The matter was left for the members to consider in the evening.

Number 0162 — Senator Parr: Again I would like this held over because I have not really had time to go through the amendments with the Department of Law. I did go through it last night, and I do have some problems with it. What they are trying to do is go the person with the first offense, under circumstances (sic). I don't have any objection in going

to that whether a defendant used a firearm or a dangerous instrument that causes serious physical injury. (Indisc.) but I am not willing to ...(indisc)....

Number 0166 — Senator Rodey: I understand your position Senator Parr and I presume from previous conversation that you are not being very enthusiastic about the bill.

Number 0172 — Senator Rodey: The title is a little deceiving because the Committee Substitute is not the same title as...

Number 0174 — Senator Ray: As far as 473 either the House or the suggested Substitute, I am not particularly pleased with either one, but I would just assume move it out, either up or down on the floor.

Number 0182 — Senator Rodey: In the mean time, we can...quite frankly we all know there will be a conference committee on this point and I think that as we can maybe come back and talk about a committee position.

Number 0187 — Senator Ray: With that Mr. Chairman I would move that we move the Committee Substitute.

Number 0187 — Senator Rodey: The motion has been made, Senator Parr.

Number 0187 — Senator Parr: I object.

Number 0188 — Senator Rodey: Senator Parr objects. All those in favor of adopting the Senate Committee Substitute and passing the Committee Substitute for 473 from committee, raise your right hand, all those opposed. The bill passes from committee with individual recommendations. (Senators' Ray, Rodey, and Anderson voting to move the committee substitute and Senator Parr voting not to move the committee substitute). Technically the bill is in committee still. Gentlemen we will be called upon a regular basis between now and whenever we adjourn to meet both past bills and consider in some detail measures from the Committees. In the closing days if I could know your schedules and preferences so we can plan committee meetings that will meet with the meetings and members. Do we have a meeting scheduled for this afternoon Mr. Bruce.

Number 0198 Mr. Bruce: No, Mr. Chairman we don't.

Number 0199 Senator Rodey: Do we have any bills that are to be moved today from other committees to us that require immediate attention.

Number 0200 Mr. Bruce: No.

Number 0202 Senator Rodey: Perhaps to be safe we should schedule a meeting for 1:30 p.m. today, is that agreeable with the members that maybe a very short meeting and if for some reason no business does transpire shortly before noon. The Judiciary Committee is recessed until 1:30 a.m.

SENATE RESOURCES COMMITTEE

LETTER OF INTENT

SCS CSHB 2(Res)

Sections 13 - 17 of this bill relate to the settlement of certain claims by the University of Alaska against the State of Alaska, Departments of Natural Resources, Administration, and Revenue.

It is the intent of the Senate Resources Committee in passing out Senate Committee Substitute for Committee Substitute for House Bill 2 (Resources) that the Board of Regents of the University of Alaska develop a plan for distribution of revenues derived from university lands to be submitted to the legislature by January 10, 1983. The Committee intends that in developing this plan the Board consider a policy of reinvesting part of the revenues from university lands located within the boundaries of local governments so as to benefit the people within such communities. The Committee further intends that such a policy give appropriate weight to statewide and other area's needs, while addressing the objective of benefiting communities near revenue-producing university lands.

The Committee further intends that the University and the Municipality of Anchorage negotiate to settle their claims presented in litigation (3AN 79 2801 Civil), Third Judicial District and that the two parties shall report to the legislature by the tenth day of the 1983 session on the results of their discussions.

As originally introduced in the Senate, this bill was accompanied by companion legislation, orginally SB 876, which provided funds to implement the Settlement Agreement between the State and the University date March 12, 1982.

The companion legislation, passed as part of the FY 83 budget, provided that $500,000 in lapsed funds of the University of Alaska be used to conduct research to determine the total dollar compensation due the University as a result of the Settlement Agreement. The funds will be used to employ independent professional fee appraisers to determine the fair market value of certain University-grant lands which have been utilized and/or disposed of by the State at less than fair market value, and to appraise certain state lands which might be conveyed to the University or relinquished to the State; to conduct research on financial transactions involving University grant-lands; and to process the quitclaim deeds necessary to convey clear title to all University-grant lands involved in the settlement.

Specifically, the Department of Law, as recipient of these funds, is to allocate $110,000 directly to the Department of Natural Resources and the balance of $390,000 directly to the University of Alaska, Statewide Office of Lanad Management. The attached budget contains a breakdown use of these funds.

C E R T I F I C A T E

STATE OF ALASKA)
) ss
FIRST JUDICIAL DISTRICT)
)

I, EVE FOX, a Notary Public, duly commissioned in and for the State of Alaska, do hereby certify that the foregoing Record of the May 13, 1982 Senate Judiciary Committee proceedings relating to the lands issue HB 2, HB 34, HB 548, HB 637, and HB 473 were recorded by the Senate Judiciary Committee and thereafter was transcribed by the Senate Records Staff under the direction of the Senate.

I further certify that the transcript consisting of pages 1 to 10, both inclusive, is a full, true and correct Record of the proceedings, considering the quality of the tape and the information furnished to me.

I further certify that the Senate Records Staff is not a relative of any of the parties, nor financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 19th day of May, 1982.

EVE FOX
NOTARY
PUBLIC

Notary Public, for the State of Alaska
My Commission Expires: My Commission Expires March 25, 1985

Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

MAY 10, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

HB 678 - "An Act relating to membership in electric and telephone cooperatives."

HB 668 - "An Act relating to the release of records by the Department of Fish and Game to the Department of Public Safety; and providing for an effective date."

HJR 77 - Proposing an amendment to the Constitution of the State of Alaska relating to annulment of regulations by the legislature.

HB 210 - "An Act relating to child custody."

HB 577 - "An Act repealing provisions relating to justification of the use of force in resisting or interfering with arrest."

HB 575 - "An Act relating to culpable mental states prescribed as elements of criminal assaults."

HB 2 - "An Act relating to land; and providing for an effective date."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:10 P.M. Committee members present were: Senators Rodey, Parr, and Anderson. Senators Bennett and Ray were absent.

010 - Call to order.

023 - Chairman Rodey brought HB 678 before the committee.

043 - Anderson moved to pass from committee with individual recommendations. There was no objection.

057 - HB 668 was brought before the committee.

077 - Senator Anderson moved to adopt the Senate committee substitute. There was no objection.

088 - Senator Parr moved to pass out of committee with individual recommendations. There was no objection.

109 - HJR 77 was brought before the committee.

131 - Senator Parr moved to adopt the committee substitute. There was no objection.

138 - Senator Anderson moved to pass out of committee with individual recommendations. There was no objection.

208 - Chairman Rodey announced that the committee will be hearing HB 2 in specific sections, dividing the bill up between University lands, homesteading, and seismographic material.

212 - Teresa Hebert, Exxon attorney, testified giving a language suggestion. She asked that the committee not adopt Sec. 11 & 12 of HB 2 which deal with seismographic material.

445 - Chairman Rodey returned HB 2 to the file.

453 - Chairman Rodey brought HB 210 before the committee.

465 - Representative Rogers testified, stating he would rather have mandatory mediation, but he also wished to avoid a fiscal note on the bill.

679 - Senator Parr moved to adopt the committee substitute. There was no objection.

685 - Senator Anderson moved to pass the bill from committee with individual recommendations. There was no objection.

689 - The next item of business was HB 577.

691 - Representative Anderson testified in favor of this bill.

786 - For the record, Senator Ray entered the meeting.

097 - Senator Parr asked the committee to hold the bill over until the next meeting. There was no objection and the bill was laid on the table.

140 - The last item of business was HB 575.

277 - After discussion, Senator Ray moved to pass HB 575 with individual recommendations.

285 - After a brief discussion, Senator Ray withdrew his motion.

298 - Senator Ray moved to add the provisions in SB 535 on to HB 575 as a committee substitute. There was no objection, and the committee substitute was adopted.

306 - Senator Ray moved to pass the committee substitute with individual recommendations. There was no objection.

314 - The meeting was adjourned at 2:20 P.M.

Sec. 38.09.040. PATENT FOR HOMESTEAD ENTRY. (a) [Same]

(1) [Same]

(2) [Same]

(3) clears and prepares for cultivation not less than one-fourth of the land entered if the land is limited to agricultural use except that the commissioner may, in his discretion, substitute a development plan in lieu of the clearing requirement if he determines that clearing is inappropriate..

(4) [Same]

(5) [Same]

[Rest of section the same]

Alaska State Legislature
Senate
Office of the President
Pouch V
State Capitol
Juneau, Alaska 99811
Official Business

MEMORANDUM

160 12½

TO: Senator Rodey

FROM: Senator Kerttula

SUBJECT: Proposed University of Alaska Land Settlement

DATE: April 28,.1982

The proposed land settlement between the State and the University of Alaska involves a considerable portion of properties located in the District I represent.

Specific legislative intent or some other type of assurance requiring the University to reinvest a SPECIFIC DESIGNATED portion of these properties for a capital development program should be included in the settlement agreement. This will prevent the University from bleeding off all these lands to support central administration at the main campus.

JK/gt/bb

MEMORANDUM State of Alaska

TO: Senator Pat Rodey
Chairman
Committee on Judiciary

DATE: May 10, 1982

FILE NO:

TELEPHONE NO:

FROM: Jeff Haynes
Deputy Commissioner
Department of Natural Resources

SUBJECT: Homesites

As mentioned at the Senate Resources Committee hearing last week, the Department does not favor removal of the habitable dwelling and on-site residency requirements for homesites. This program was originally aimed at persons of limited means who were willing to undertake the sweat equity requirements in return for land for which the purchase price was forgiven. Were these requirements eliminated, the competition for homesites would become extremely intense as standard subdivisions parcels would no longer be attractive by comparison. As a result, those originally intended as beneficiaries of the homesite program could easily be sqeezed out.

The Department recognizes that the method of homesite disposal, which requires compliance with the sweat equity provisions before patent is issued, makes it impractical to obtain financing for the construction of homesite dwellings. However, many homesite parcels are located sufficiently distant from existing settlements and public services as to render bank financing questionable regardless of title considerations. Moreover, State action to make full AHFC financing available for homesites would tend to dilute the sweat equity requirements of the program, again making it more difficult to reach the intended recipients of the homesite program.

A possible approach which would recognize both the objectives of the program and the existing problems relating to financing would be the offering of State backed loans for the materials necessary to construct the habitable dwelling on a homesite parcel. The labor for constructing the dwelling would still be provided by the homesite recipient. Should you elect to pursue this suggestion, we would recommend that you contact the Department of Commerce & Economic Development to determine the particulars of such a program. We would be pleased to assist you in this matter should it be desired.

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Bradley
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

May 6, 1982
8:10 a.m.

Beltz Room
Capitol - 211

Hearing:

CSHB 637 Relating to the regulation of the taking, purchase, or sale of certain fishery resources.
CSHB 2 Relating to land.

CSHB 637

Senator Mulcahy moved the adoption of the Resources Committee Substitute for CSHB 637. He then moved SCSCSHB 637 (Res) with individual recommendations.

CSHB 2

Senator Mulcahy moved that the Commissioner be required to keep all exploration data and its derivations confidential. There was no objection.

Larry Vavra, Union Oil of California, reiterated the possibility of litigation if the seismic amendment is adopted, particularly if the effective date is January 1, 1982, and quoted from Chapter .01 regarding Retroactive Statutes.

Senator Mulcahy stated that he believes the State should share the cost of obtaining the data.

John Katz, Commissioner, Department of Natural Resources, stated that the Department would try to develop a sequence for obtaining the data that would reduce the possibility of litigation.

Jim Dale, Exxon, Alaska Division Attorney, suggested that the State be allowed to obtain raw and first run data on group shoots, but only raw data on proprietary shoots.

Katz suggested an approach that would consist of listing the permutations suggested by Dale and the Department, and allow the Commissioner to use

those he found necessary to make decisions on a particular lease sale.

Senator Eliason expressed objection to taking the data from the companies without compensation.

Senator Sturgulewski moved the adoption of the short definition of uninterpreted exploration data and asked unanimous consent.

Senator Gilman moved the deletion of the January 1, 1982 effective date, and a roll call vote was taken: Mulcahy, Eliason, and Gilman yea; Fischer, Sturgulewski, and Fahrenkamp nay. So the motion failed.

Senator Mulcahy moved to replace Sections 10 and 11 with the substitute language proposed by the Department, as amended. There was no objectio.

Senator Fischer moved the adoption of the revised Sections 12-16 relating to University lands. There was no objection.

Senator Sturgulewski, in addressing the homestead portion of the bill, stated that lands good for agriculture and forestry are generally the best for homesteads, also.

Jeff Haynes, Deputy Commissioner, Department of Natural Resources, stated the intent of the Department is to focus the homestead option on lands with agricultural potential but that do not meet the soil classification standards for true agricultural lands.

Senator Sturgulewski moved that remote parcels be limited to 40 acres in size. There was no objection.

Senator Sturgulewski moved that the habitable dwelling size be increased to 400 square feet. There was no objection.

Senator Sturgulewski moved to increase the occupancy requirement from 35 to 55 months, and a roll call vote was taken: Fischer, Sturgulewski yea : Bradley, Mulcahy, Eliason, Gilman nay. So the motion failed.

Senator Fahrenkamp recessed the meeting at 9:20 a.m. to allow staff to prepare a "cut and paste" version of the Resources Committee Substitute.

The meeting was called back to order at 1:15 p.m.

Senator Eliason moved that the Committee rescind its action on the amendment limiting remote parcels to 40 acres in size. There was no objection.

Senator Fischer moved that a person who has received more than 15 acres of state land be ineligible for land under CSHB 2, and asked unanimous consent.

Senator Rodey proposed an amendment that would enable homesite recipients to obtain financing for dwellings, by deleting the requirement that a dwelling be built before title to the land could be received, and by deleting the 5-year residency requirement.

Senator Fahrenkamp expressed concern over the proposal, as it eliminates the "sweat equity" concept of the bill.

Haynes expressed opposition to the proposed amendment, as it might increase competition for homesites, and not allow the people who want to live and work the land to benefit from the program. He suggested loans only to obtain materials, not for actual construction.

Katz explained that the Department is attempting to work out a method of reimbursing the oil companies for the seismic data. Possibilities are a credit against future royalties or bonuses, or a sufficient capital budget. Fair market value of the seismic information would be determined by an independent appraiser, with a penalty levied against companies who refuse to sell.

Senator Mulcahy moved the adoption of the Resources Committee Substitute for CSHB 2. He then moved SCS CSHB 2 (Res) with individual recommendations.

Senator Sturgulewski moved for the adoption of the Letter of Intent to accompany SCS CSHB 2 (Res).

The meeting was adjourned at 1:45 p.m.

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Bradley
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

May 5, 1982
1:40 p.m.

Beltz Room
Capitol - 211

Hearing:

HB 888 Relating to the sale of royalty oil by the State of Alaska to the Tesoro Alaska Petroleum Company.
CSHB 889 Relating to the sale of royalty oil by the State of Alaska to Doyon, Ltd.
CSHB 2 Relating to land.

HB 888

Senator Gilman moved HB 888 with individual recommendations.

CSHB 889

Senator Gilman moved CSHB 889 with individual recommendations.

CSHB 2

Senator Sturgulewski moved the adoption of an amendment changing "him" to "the Commissioner" on page 7, line 3. There was no objection.

John Katz, Commissioner, Department of Natural Resources, stated he had reservations about Senator Bennett's proposed amendment, which would require that land exchanges above 640 acres receive legislative approval. He stated that Bennett's amendment raises a real concern relating to public notification and hearings on proposed land exchanges, but feels this is already covered in the current statute, and that Bennett's concerns can be resolved through proper implementation of the statute.

Katz spoke in support of Senator Anderson's proposed amendment, which would allow the State to grant survey money to municipalities.

Senator Fischer moved the adoption of the Anderson amendment, and Senator Sturgulewski asked unanimous consent.

Marv Halloran, Special Assistant to the Commissioner, Department of Natural Resources, proposed new seismic language that would extend the provision of confidentiality to the analysis, reproduction, and interpretation of data; increase the penalty for breach of confidence to a Class B felony; require that employees who have access to the confidential data post a bond in an amount to be determined by the Commissioner; and include an effective date of January 1, 1982.

Jim Dale, Exxon, Alaska Division Attorney, expressed opposition to the seismic language which states that geological and geophysical data is required in every presale analysis, and to the January 1, 1982 effective date.

Senator Fischer proposed an amendment to delete page 6, lines 26-29, and replace it with "In order to achieve the purposes of this Chapter, the". There was no objection.

Dale explained that because of the value of proprietary data to the companies, some may decide to legally challenge any law requiring them to provide the State with such data.

Gene Wiles, Chevron, reiterated Chevron's opposition to the amendment. He urged that it be mandatory that the Commissioner keep the data and its analysis, reproduction, and processing confidential.

Halloran urged support for the January 1, 1982 effective date, stating that the data gathered this past winter is needed by the Department to carry out the upcoming Beaufort lease sale.

The Committee was adjourned at 3:10 p.m. until 8:00 a.m. May 6, 1982.

CORRECTED VERSION, 5/7/82

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Bradley
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

May 3, 1982
1:35 p.m.

Beltz Room
Capitol - Room 211

Hearing:

CSHB 2 An Act relating to land; and providing for an effective date.

John Katz, Commissioner, Department of Natural Resources, presented a proposed amendment that would allow the Department to obtain seismic data from the oil companies. He stated that the data is needed to assess which bidding method to use and to evaluate the bids received, and that because of a low capital budget this year, the Department is unable to purchase the data from the companies. The Department could best utilize raw data run once through the computer. In urging adoption of the amendment, he also urged an effective date of January 1, 1982, which would enable DNR to obtain data from this past winter's exploration.

Jim Dale, Exxon, Alaska Pacific Division Attorney, opposes the amendment, stating that Exxon's geologic and geophysical data forms the basis of its competitive nature, and thus is confidential and proprietary. Exxon proposed an amendment which would allow the State to obtain only raw data and materials necessary to process the data, and would require that the reproduction, analysis, processing, and interpretation of the data must be kept confidential. Dale explained that data run even once through the computer can reveal a company's proprietary stand. He urged stronger penalties for disclosure of the information, and expressed Exxon's opposition to allowing DNR to obtain data gathered prior to the actual effective date of the bill.

Larry Vavra, Union Oil Company of California, expressed opposition to a requirement that the oil companies provide DNR with data run once through the computer, but urged a speedy resolution of the issue, so as to avoid any delay of lease sales.

Gene Wiles, Chevron, stated that Chevron opposes DNR's proposed amendment in its entirety, and does not think the data will benefit the state. In response to questions raised by Senator Fischer, Wiles stated that he is not opposed to DNR having the raw data, but the processing procedures must be kept confidential and the interpreted data must not be misused.

Beverly Ward, ARCO, stated that ARCO has not taken a strong position on the amendment, but is philosophically opposed to giving its "secrets" away. Ward urged stiff penalties for a breach of confidence, and expressed opposition to a January 1, 1982 effective date. She concluded by emphasizing the complex definitions of "processed data" and "interpreted data".

Merry Tuten, Director of Land Management, University of Alaska, expressed support for the portions of the bill relating to University lands, and also expressed support for Senator Bennett's proposed amendment.

Senator Fahrenkamp stated that HB 2 would be held in Committee until Wednesday to allow further work to be done.

The meeting was adjourned at 3:00 p.m.

Received
5/3/82

Madam Chairman and members of the Committee, my name is Jim Dale and I am here on behalf of Exxon as Division Attorney for the Alaska/Pacific Division in Houston. With me is Theresa Hebert, an attorney in our Anchorage office. As you may know, the Alaska/Pacific Division is responsible for Exxon's onshore and offshore exploration activities in Alaska. Earl Stout, the Alaska/Pacific Division Manager, has asked me to convey his apologies for not being here today to discuss Committee Substitute for House Bill No. 2, however, another critical matter has prevented his attendance. Therefore, I am here on his behalf to address Sections 9 and 10 of this bill, which, as you know, would give the DNR the authority to obtain our geological and geophysical data prior to a lease sale.

This issue is one which is of extreme importance to Exxon. We believe that the geological and geophysical data and information which we acquire, process, and interpret prior to a lease sale form the basis of our competitive position in the lease sale. Exxon considers this data and information so highly confidential and proprietary that very few employees within our own company are permitted access to this information, and then only under very guarded conditions.

In addition, this data is acquired at very substantial costs to Exxon, or some $15,000-30,000 per mile of seismic shoot onshore.

A typical seismic shoot of 500 miles will cost anywhere from $7,500,000 to $15,000,000. This data then must be processed at a sum of approximately $600/mile to $1,000/mile.

We oppose, for several reasons, any bill which would require us to provide this data to the DNR prior to a lease sale at very little cost. Before I explain our position in more detail, I would point out that after we acquire a lease, we are required to provide all data associated with the lease to the DNR. We believe that being required to forfeit this data prior to a lease sale jeopardizes the very confidential and proprietary worth of the data to us. Disclosure of this data, whether intentional or unintentional, would destroy the very competitive nature of the bidding system. Second, we believe that such a requirement furthers a policy which we oppose - that is, placing the government in competition with private enterprise rather than relying on the competitive nature of the free market to guarantee the state maximum economic and physical recovery of the resources. Third, this bill would allow the state to avoid paying fair market value for the data. We believe that such legislation would be counter to that provision of the Alaska constitution which provides that "private property shall not be taken or damaged for public use without just compensation." We believe the Alaska Constitution prohibits governmental taking or damage of our geological and geophysical data without just compensation.

However, over the past few weeks, we have had discussions with the DNR in an attempt to accommodate the DNR because of its budgetary constraints which we are painfully aware of in view of the fact that we are subject to the same conditions which have created those constraints.

Those very open and straightforward discussions focused on several major issues. First, the bill as written would require that all persons conducting geophysical exploration on unleased land provide the commissioner access to and copies of all uninterpreted exploration data acquired from these activities. I would point out that this requirement will not just affect oil companies but will affect geophysical companies, which make their livelihood from acquiring and selling this data to third parties.

As written, this bill would require forfeiture of raw field data and processed data, because only interpreted data is excluded. It was this issue which resulted in a fundamental breakdown in agreement with the DNR - that is, what level of data and under what terms we would provide that data to DNR prior to a lease sale. The fundamental difference occurred when it was made clear that DNR wants data beyond our raw field data, or in other words, that data which we consider to be processed and thus highly confidential and proprietary. Keep in mind that raw field data is required at approximately

$15,000/mile onshore or $7,500,000 for a typical seismic shoot while it is then processed at a comparably insignificant sum of approximately $375,000. So, as you can see, the cost of processing, which DNR is trying to avoid, is not the primary reason why we strenuously object to forfeiting our processed data. The major forfeiture, or $7,500,000, has already occurred if raw field data is provided. It is the intrinsic worth of the data to Exxon which is so important to us.

In this regard, Exxon presented language to the DNR which would authorize the DNR to obtain our raw field data and all associated materials necessary to process and analyze that data. We believe this language represented a substantial compromise from both our legal and corporate position. The DNR found this language unacceptable because it wanted data which is processed.

Second, we believe that the legislation does not provide strenuous enough penalties for the release of this confidential data. The bill would make disclosure of this information subject to the lowest form of misdemeanor, or a Class A misdemeanor. We hardly think the penalty meets the crime. We also believe that this legislative body should not go on record as declaring such an offense a "less serious offense against property interests or a less serious offense against

public administration or order," as a Class A misdemeanor is defined. We believe that the legislature should provide a more adequate penalty for knowing and willful release of this data, which could have devastating effects on free market competition, and on public administration and order.

Third, this bill, as worded, would allow the DNR to acquire data which is being generated under permits issued prior to the effective date of the bill. In our particular instance, we applied for permits to conduct seismic activity believing that we ultimately would not have to turn this data over to the state prior to a lease sale because, in our opinion, the state lacked the authority to require such data. As you know, one of the superior courts of the State of Alaska has agreed with our opinion. To require data generated under those permits will deprive us of the opportunity to decide whether to seek the permit in the first place, knowing that the result of our efforts must be made available to the state. In the spirit of compromise, however, we informed the DNR that we would be willing to provide data generated under existing permits if the bill requires only our raw field data and associated materials necessary to process and analyze that data. Since this bill would require processed data, we must maintain our original position.

We also believe that the bill contains a major oversight. It now provides that all data submitted to the DNR shall be kept confidential. It does not provide the same degree of protection to any reproduction, analysis, processing, or interpretation of that data which the DNR or a third party on behalf of the DNR might prepare. Unless analyses or interpretations are also kept confidential, our data has little worth to us.

This bill would also deprive the commissioner of flexibility if he later determines, as we and other companies have maintained, that a pre-sale evaluation based on geological and geophysical data is not necessary in order to choose a proper bidding method. As presently drafted, the bill requires the commissioner to obtain copies of all uninterpreted data from persons conducting geological and geophysical operations on unleased state land. We believe this mandatory requirement should be removed. First, taking the current situation as an example, if the commissioner is required to obtain data from all persons currently conducting seismic surveys on the North Slope, he will obtain approximately 10 times the data that Exxon will obtain and, logically, will require a staff much larger than the staff which we have devoted to geophysical operations. Without flexibility, we believe that the DNR will have to create an enormous staff to handle this workload. Second, we believe that the DNR may some day, and soon we hope, reassess its position in light of the unfortunate

experiences which led the DOI to move away from pre-sale evaluations based on G&G data. Without flexibility, the commissioner is not free to make such a decision.

In conclusion, we would sincerely appreciate the opportunity to contribute draft language which incorporates what we understand to be the DNR's position as well as our position, except for our fundamental disagreement. This language would allow the DNR to obtain our raw field data and all associated materials necessary to process and analyze that data. As I said before, we believe that this represents a substantial compromise from both our legal and corporate position in view of the intrinsic worth of this data to us and also in view of the substantial sums that we expend to acquire this data.

In addition, I would be glad to provide you additional language which incorporates what we consider to be sufficient penalties for release of this data.

Madam Chairman and members of the Committee, we thank you for the opportunity to express our views on Sections 9 and 10 of Committee Substitute for HB 2. Again, for the reasons cited above, we would ask this committee not to approve Sections 9 and 10 of the bill in its current form.

Alaska State Legislature

SENATE
Resources Committee

Offical Business

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

TO: Senator Fahrenkamp
Chairman

DATE: 5/5/82

FROM: Resa King R.K.
Staff

RE: Committee Action on
CS HB 2(Fin) am

The following reflects my notes on the Committee's action this afternoon on CS HB 2(Fin) am:

✓ 1. Approved changing "him" to "the commissioner"

✓ 2. Approved Senator Anderson's language on municipal lands.

✓ 3. Approved on the first page of DNR's substitute language:

Delete "(a) of this section . . . managing resources underlying state land"

Inserted "this chapter" after "the purposes"

The first part would read "(aa) In order to achieve the purposes of this chapter the commissioner may . . ."

✓ 4. Approved on the first page of DNR's substitute language, mid-page:

Delete: "Upon request of the persons supplying the information"

Other language suggestions not acted upon.

X First page of DNR's substitute language, toward the bottom, dealing with penalties, a suggestion similar to the following:

"Whenever any employee of the State reveals information in violation of this section, the permittee who supplied such information to the department, and any person to whom such permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate superior court of the state of Alaska against the State. In any action commenced against the State pursuant to this section, the State may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the confidential information which is the basis of such suit was acting outside the scope of his employment in revealing such information."

No motion

X ? There was a question raised about the effective date being January 1, 1982

? (3.) Under DNR's substitute language "short definition" language was suggested similar to the following:

No motion

"It is also the intent of this definition that a permittee shall provide only raw field data and associated material necessary to locate, identify, analyze or interpret the field data in the event of a proprietary survey."

4. University of Alaska lands settlement language is in the folders.

5. Homestead language changes are in the fold

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

March 26, 1982

The Honorable Nels Anderson
Alaska State Senate
Pouch "V"
Juneau, Alaska 99811

Re: Financial Assistance for Municipal
Land Disposal Programs

Dear Senator Anderson:

Commissioner Katz has asked me to furnish you with language that would allow all municipal lands to qualify for state financial assistance for disposal programs. This Department will recommend the change in our land disposal presentation to the Legislature. We would be pleased to support it if it is introduced as legislation.

The required bill would state:

"AS 38.04.021(a) is amended to read:

Sec. 38.04.021. Disposal of municipal [GRANT] land [ENTITLEMENTS]. (a) A municipality may apply for financial assistance for the execution of a land disposal program [OF GENERAL GRANT LAND ENTITLEMENTS RECEIVED FROM THE STATE UNDER AS 29.18.201 - 29.18.213] by submitting a request to the commissioner for inclusion in the request submitted to the legislature under AS 38.04.020(e). A municipality may request financial assistance for expenses of surveying land, designing subdivision plats, installing improvements required by municipal ordinance or regulation of the local platting board, and other reasonable direct costs of land disposal."

Please let me know if you or your staff have any questions. I would be please to provide further assistance.

Sincerely,

Mark Wittow

Mark Wittow
Special Assistant
to the Commissioner

cc: Tom Hawkins, Choggiung, Ltd.

CHOGGIUNG LIMITED
P.O. BOX 2[illegible] • DILLINGHAM, ALASKA 99576 • PHONE (907) 842-5218

196

March 8, 1982

John Katz, Commissioner
Dept. of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear John:

Thanks for the response on the survey monies for land disposal issue. I suppose that the recollection of your staff is correct as far as legislative intent of that provision of HB 31 is concerned. I guess that you realize that your answer does not correct the legislature's oversight as it pertains to communities in this neck of the woods.

You state that the law may not expressly exclude other municipalities but the legislature's intent effectively establishes a prioritization that leaves us at the long end of a short line. Do we amend the legislation or the intent? What is the preferred mechanism for including those municipalities that do not have on HB 133 land entitlement.

This issue has been discussed with rural legislators who support our contention that all municipalities should qualify even if the source of their land base is not HB 133. Please advise me how to effect this modification.

I have discussed the matter with Community and Regional Affairs and they will support the adjustment that you deem most appropriate. Senator Nels Anderson has also indicated support conceptually but has requested me to determine what action is required. This strikes me as a housekeeping matter but I would like your perception on the proper path on which to proceed.

Sincerely,

Tom

Tom Hawkins
Landman

TH:tms

cc: Larry Kimball
Senator Nels Anderson
Representative Joe Chuckwuk
Mayor DuWayne Johnson

PROPOSED NEW LANGUAGE FOR SEISMIC - I.

AS 38.05.180 is amended by adding a new subsection to read:
(aa) In order to achieve the purposes of (a) of this section, to conduct the pre-sale analysis required by (f) of this section, and to assist the department in knowledgeably managing resources underlying state land, the commissioner may require persons conducting geophysical exploration for oil or gas resources or drilling a stratigraphic test well on unleased state land to provide him with access to and copies of all uninterpreted exploration data acquired from these activities. The commissioner shall pay all reasonable costs of reproducing the data. The commissioner shall keep all exploration data submitted to the department under this subsection confidential in accordance with AS 38.05.035(a)(9)(C). All employees, agents or contractors of the department who have access to exploration data submitted under this subsection are subject to AS 11.56.860. All agents or contractors of the department who have access to exploration data submitted under this subsection shall execute and post a bond in an amount to be determined by the commissioner. The bond shall be to the benefit of the State and the permittee.

AS 38.05.180(aa) added by Sec. ___of this Act applies to uninterpreted data acquired from geophysical surveys which were commenced on unleased state lands on or after January 1, 1982.

Alaska State Legislature

SENATOR
DON BENNETT
P.O. BOX 2601
FAIRBANKS, ALASKA 99707

LEGISLATIVE ADDRESS
POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811

5/3/82
Received
12:20pm

Senate

May 3, 1982

Senator Bettye Fahrenkamp
Senate Resources Committee
Beltz Room

Dear Bettye:

As you know, the state is involved in numerous land swaps with other organizations. In many instances these exchanges involve considerable acreage and often have an impact on public policy. Unfortunately, these land swaps are not now subject to legislative review in most cases. To correct that situation, may I ask you and the Senate Resources Committee to consider including the enclosed language in HB 2 when the committee takes up that bill. Thank you for your consideration.

Best Regards,

Don Bennett

Senator Don Bennett

DB/jk

(2)

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 30, 1982

SUBJECT: Legislative approval of land exchanges (Work Order No. 12-2747)

TO: Senator Don Bennett
Co-Chairman, Senate Finance Committee

FROM: Richard A. Bradley
Legislative Counsel

You have requested a bill which requires legislative review and approval of land exchanges between the state and any other party.

In preparing this work order for you, I made a computer search of the Alaska Statutes data base to determine the sections involved in "exchange" with "land". Some 38 different sections in the Alaska Statutes have these words within the same sentence. After discussing the matter with Dick Robinett on your staff, I prepared the enclosed bill not dealing with land exchanges involved in state programs where the exchange seems collateral to the main program, e.g., highway acquisition [AS 19.05.070], management of the Mendenhall Wetlands [AS 16.20.034], or management of the Trading Bay State Game Refuge [AS 16.20.038].

While I have not limited the authority of the state under AS 29.18.290 - 29.18.210, [municipal exchanges] I recognize that these sections come close to those you are concerned about. I understand that these authorities are carried over into the new municipal code.

Similarly I have not amended those involving exchanges after a natural disaster where land is rendered useless or less useful [AS 38.05.348] or where necessary to effectuate a flood control project [AS 38.05.349].

A copy of the computer search is included for your information.

Without the enactment of AS 38.50, the Department of Natural Resources would be without authority to make any land exchanges not collateral to another program. There is, of course, no constitutional requirement that the legislature grant this authority to the executive. As the Supreme Court said in State v. Lewis, 559 P.2d 630 (Alaska 1977), no Act of Congress requires "that a state dispose of its lands at all". (599 P.2d at 637). No provisions of the Alaska Constitution require that the state dispose of its lands.

There are, however, impediments to the exercise of this power by the legislature. The direct grant (or sale, lease, exchange, etc.) by the legislature of land to individual members of the public, if sought to be done in all cases where the state is transferring land, would undoubtedly be a violation of the prohibition against special and local legislation. Article II, Sec. 19, Alaska Constitution. [It would also very likely violate the separation of powers doctrine to the extent that a "legislative veto" was involved (requiring the executive to submit for legislative approval items normally within the executive power). Because the special and local legislation prohibition is more narrowly on point and seems dispositive of the basic constitutional policy question and because of the limitations of time, I have ignored the separation of powers arguments in these comments.]

By analogy, note that the power to grant divorces is historically a legislative power, not a judicial power. The reason why most modern legislatures may not exercise the power is because almost all states have prohibitions against the exercise of special and local acts "if a general act can be made applicable".

For these same reasons, the approval by the legislature of each individual transfer of land from the state would violate the requirement against special and local legislation because general legislation establishing procedures for the transfer of the title to land "can be made applicable".

On the other hand, I believe that the Alaska Supreme Court has indicated that there is no violation of the local and special law prohibition by that unique situation where the size of the transfer or exchange is not provided for under general law or as a matter of policy should have legislative approval. The so-called Cook Inlet transfer raised these questions and the Court concluded that the transfer did not violate the special and local provisions. State v. Lewis, supra, starting at 642.

The Court held that Chapter 19, SLA 1976, the Act that approved the Cook Inlet transfer was "a general act, addressing a matter which is unique, but of statewide concern".

> Ample evidence in the record supports our conclusion that Chapter 19, SLA 1976 is designed to facilitate statewide land use management and to resolve a host of pressing legal issues arising out of the context of ANSCA. The conflict between [the] Cook [Inlet Regional Corporation] and the government concerning the adequacy of withdrawals for Native selection implicated both future state selections and existing state patents. Clouds on title could have resulted in protracted litigation and impaired effective planning for a variety of state needs.

State v. Lewis, supra, at 643.

The case approved the relatively individualized legislative action in the Cook Inlet transfer; the language of the Court is clear enough, however, that a more generalized transfer, if it does not implicate the significant state issues found in the Cook Inlet case, might well not survive judicial scrutiny.

The logic of these concerns in the context of the legislation you requested seems to be this: a requirement of legislative approval for the exchange of state land for other lands will be upheld if broad policy questions are raised and addressed in the legislation.

The reciprocal of this rule is that legislative approval of individual exchanges between the state and anyone else of insignificant amounts of land or perhaps of more significant

exchanges not presenting complex policy issues may be held to violate the requirement against special and local legislation.

It is for these reasons that the bill has been drafted to require legislative approval of exchanges involving more than 640 acres. I would prefer that the threshold be higher but I pegged it at that low a point because your request had no threshold stated.

And having provided you with this advice, we will, of course, provide you with a bill that has no thresholds, if you wish. Such a bill would be in my view clearly unconstitutional.

If I may assist further, please advise.

RAB:ljb

Enclosures

SEARCH - QUERY
0001-EXCHANGE WITH LAND

S13.16.410	DOCUMENT=	1	OF	38
S13.26.280	DOCUMENT=	2	OF	38
S16.20.034	DOCUMENT=	3	OF	38
S16.20.038	DOCUMENT=	4	OF	38
S18.26.050	DOCUMENT=	5	OF	38
S19.05.070	DOCUMENT=	6	OF	38
S19.05.100	DOCUMENT=	7	OF	38
S19.22.020	DOCUMENT=	8	OF	38
S19.27.050	DOCUMENT=	9	OF	38
S29.18.030	DOCUMENT=	10	OF	38
S29.18.209	DOCUMENT=	11	OF	38
S29.18.210	DOCUMENT=	12	OF	38
S30.15.040	DOCUMENT=	13	OF	38
S35.20.030	DOCUMENT=	14	OF	38
S38.05.030	DOCUMENT=	15	OF	38
S38.05.348	DOCUMENT=	16	OF	38
S38.05.349	DOCUMENT=	17	OF	38
S38.50.010	DOCUMENT=	18	OF	38
S38.50.020	DOCUMENT=	19	OF	38
S38.50.030	DOCUMENT=	20	OF	38
S38.50.040	DOCUMENT=	21	OF	38
S38.50.050	DOCUMENT=	22	OF	38
S38.50.060	DOCUMENT=	23	OF	38
S38.50.070	DOCUMENT=	24	OF	38
S38.50.080	DOCUMENT=	25	OF	38
S38.50.090	DOCUMENT=	26	OF	38
S38.50.100	DOCUMENT=	27	OF	38
S38.50.110	DOCUMENT=	28	OF	38
S38.50.120	DOCUMENT=	29	OF	38
S38.50.130	DOCUMENT=	30	OF	38
S38.50.140	DOCUMENT=	31	OF	38
S38.50.150	DOCUMENT=	32	OF	38
S38.50.160	DOCUMENT=	33	OF	38
S38.50.170	DOCUMENT=	34	OF	38
S38.95.050	DOCUMENT=	35	OF	38
S38.95.060	DOCUMENT=	36	OF	38
S43.80.015	DOCUMENT=	37	OF	38
S45.55.130	DOCUMENT=	38	OF	38

20601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

12-2747
Bradley

IN THE SENATE BY THE FINANCE COMMITTEE

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the exchange of state land and interests in state land by the commissioner of natural resources."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.50.040 is amended to read:

Sec. 38.50.040. LAND SUBJECT TO EXCHANGE. Except as otherwise provided in this chapter, the director is authorized to convey for purposes of a single exchange not to exceed 640 acres of [ANY] state land or an interest in land regardless of the authority under which the land or interest was obtained by the state. The conveyance of university land shall be approved in the manner prescribed in AS 38.05.030.

* Sec. 2. AS 38.50.050 is amended to read:

Sec. 38.50.050. CONVEYANCE OF MINERAL RIGHTS. Subject to the requirements of this chapter, the director is authorized to exchange mineral rights in not to exceed 640 acres of state land to the extent that the conveyance is authorized by the state constitution and applicable federal law. The director may not exchange or receive the surface estate of land or the mineral rights in it, one without the other, unless the separation of estate is necessitated by a prior separation of ownership or by restrictions in applicable law, or the director otherwise finds that the conveyance or receipt of the surface or mineral estates, one without the other, is necessary to achieve a significant public purpose.

L 20A

Alaska State Legislature

SENATE
Resources Committee

Offical Business

BETTYE FAHRENKAMP, Chairman
VIC FISCHER, Vice-Chairman
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

TO: Bettye Fahrenkamp
Chairman

DATE: 5/5/82

FROM: Resa King RK.
Staff

RE: CS HB 2 - Relating to to Land - Seismic Section

Attached is a copy of the Department of Natural Resources suggested substitute language for the seismic portion of the bill.

In conversation with Exxon employees the following changes are requested:

First sentance, after "In order" delete "to achieve the purposes of (a) of this section, to conduct the pre-sale analysis required by (f) of this section, and"

They stated if this language remained that it would allow for one more avenue to challenge a lease sale.

Under penalities they requested language be added to be consistent with the OCS Lands Act:

"Whenever any employee of the State reveals information in violation of this section, the permittee who supplied such information to the department, and any person to whom such permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate superior court of the state of Alaska against the State. In any action commenced against the State pursuant to this section, the State may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the confidential information which is the basis of such suit was acting outside the scope of his employment in revealing such information."

Under the short definition f exploration data they would like to see the following language added:

"It is also the intent of this definition that a permittee shall provide only raw field data and associated material necessary to locate, identify, analyze or interpret the field data in the event of a proprietary survey."

There was also some discussion regarding the language on the first page, of the substitute language, mid-page, "Upon the request of the persons supplying the information". The discussion centered around the need for this language and why not just have the Commissioner keep the data confidential?

A copy of the Attorney General's opinion referenced in Commissioner Katz's testimony was requested. I have been informed that there is not an official written Attorney General's opinion on the subject of the need for seismic data for pre-sale analysis.

The personnel from Exxon did supply a copy of a January 23, 1980 opinion authored by Tom Koester which addresed the issue. I would call your attention to page 5, top of the page. I have checked with the author of the memorandum and have been informed that there has not been an update to this memorandum.

Also, attached is a copy of our Legal Counsel's opinion on the term "uninterpreted date".

Attachments

MEMORANDUM State of Alaska

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources

DATE: May 5, 1982

FILE NO:

TELEPHONE NO:

FROM: Mary Halloran M Halloran
Special Assistant
to the Commissioner
Natural Resources

SUBJECT: Substitute language for CSHB 2 (Fin) am, Secs. 10 and 11 (seismic)

In response to your request, we have prepared substitute language for Secs. 10 and 11. The substitute language differs from the current version of HB 2 in the following:

1. It provides that the Commissioner's authority to require data is permissive rather than mandatory by changing the word "shall" to "may" in the first sentence.

2. It provides that not only the exploration data, but also any reproduction, analysis, processing, or interpretation of such data shall be kept confidential upon the request of the persons supplying the data. This change makes it explicit that the confidentiality provision applies to generated or derived material.

3. It provides a penalty of not more than $50,000 or imprisonment for not more than 10 years, or both, for the disclosure of such data by any person, employee, agent or contractor of the State. This change increases the penalty provision from a Class A misdemeanor (one year and $5,000 fine) to that equivalent to a Class B felony.

4. It provides that agents or contractors of the department who have access to exploration data or derived information post a bond to the benefit of the State and the permittee.

5. It provides that the provisions of the subsection apply to uninterpreted data acquired from geophysical surveys commenced on unleased state lands on or after January 1, 1982.

At your request, we are also providing for the Committee's consideration two definitions of exploration data, a long definition and a shorter one. We would prefer that the longer definition not be adopted by the Committee as we have not had sufficient time to extend the courtesy of review of the language to all members of industry. It would be our intent, however, to propose the longer definition as implementing regulation for this subsection, thus affording industry the opportunity to review and comment on its highly technical content.

Attachments

SUBSTITUTE LANGUAGE FOR CSHB 2 (Fin) am,
Sec. 10 and Sec. 11

Sec. 10. AS 38.05.180 is amended by adding a new subsection to read:

(aa) In order to achieve the purposes of (a) of this section, to conduct the pre-sale analysis required by (f) of this section, and to assist the department in knowledgeably managing ~~resources~~ underlying state ~~land~~, the commissioner may require persons conducting geophysical exploration for oil or gas resources or drilling a stratigraphic test well on unleased state land to provide him with access to and copies of all uninterpreted exploration data acquired from these activities. The commissioner shall pay all reasonable costs of reproducing the data. ~~Upon request of the persons supplying the information,~~ The commissioner shall keep confidential all exploration data submitted to the department under this subsection and any reproduction, analysis, processing, or interpretation of such data prepared by the department or any third party on behalf of the department which is based in whole or in part upon such data. Notwithstanding AS 11.56.860(c), any person, including any employee, agent or contractor of the State, who knowingly and willfully reveals any data or information required to be kept confidential under this subsection shall, upon conviction, be punished by a fine of not more than $50,000 or by imprisonment for not more than 10 years, or both. All agents or contractors of the department who have access to exploration data or information derived from the data submitted under this subsection shall execute and post a

bond in an amount to be determined by the commissioner. The bond shall be to the benefit of the State and the permittee.

Sec. 11. AS 38.05.180(aa) added by Sec. 10 of this Act applies to uninterpreted data acquired from geophysical surveys which were commenced on unleased state lands on or after January 1, 1982.

moved ok

Short definition of exploration data.

uninterpreted

Exploration data means all field data which have been initially processed and are ready for geologic and geophysical analysis, and associated material necessary to locate, identify, analyze, or interpret the field data. It is the intent of this definition that the permittee shall provide data which corresponds to the data which a geophysical contractor would provide participants in a group seismic survey.

Definition of exploration data.
(long version)

"Exploration data" means all field data which have been initially processed and are ready for geologic and geophysical analysis, and associated material necessary to locate, identify, analyze, or interpret the field data. This includes but is not limited to the velocity spectra, final common depth point stack seismic record section, navigation tapes, shot point location base map, field or surveyor's notes, migrated sections, observed gravity values with locations, magnetic total intensity values with locations, and checkshot surveys from stratigraphic test wells. It is the intent of this definition that the permittee shall provide data which corresponds to the data which a geophysical contractor would provide participants in a group seismic survey.

(A) Strike the last sentence of Section I and substitute the following language:

"Any person, including any employee, agent or contractor of the State, who knowingly and willfully reveals any data or information required to be kept confidential by this section shall, upon conviction, be punished by a fine of not more than $50,000, or by imprisonment for not more than 10 years, or both."

(B) I recommend also that the proposed section be amended to allow for a civil action for damages against the State. This amendment would be consistent with the OCS Lands Act and would also provide greater incentive for the State to take positive steps to assure that its employees do not reveal confidential information:

"Whenever any employee of the State reveals information in violation of this section, the permittee who supplied such information to the department, and any person to whom such permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate superior court of the state of Alaska against the State. In any action commenced against the State pursuant to this section, the State may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the confidential information which is the basis of such suit was acting outside the scope of his employment in revealing such information."

Exploration management does not support any legislation which would give the State the right to access geological and geophysical data acquired by a permittee on unleased land because of the potential adverse impact on our competitive position on unleased acreage should that information be released (whether unintentionally). However, Exploration management will not oppose such legislation if the legislation provides (1) that the Commissioner may access uninterpreted and unprocessed data only and (2) that such legislation is not retroactive. Exploration management also strongly believes that the legislation should contain the penalties proposed herein and should also grant the right to sue the state for civil damages. However, should the Legislature believe that a $100,000 fine and a potential 1 year imprisonment (which would still be only a misdemeanor since a misdemeanor is a crime for which a sentence for a term of more than 1 year may not be imposed) would serve as an appropriate deterrent, our management would support such a measure as an acceptable compromise.

OF ALASKA

TO: Geoffrey Haynes
Deputy Commissioner
Department of Natural Resources

DATE: January 23, 1980

FILE NO: J-66-734-79

TELEPHONE NO: 465-3684

SUBJECT: Oil & Gas Leasing Schedule

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

By: GTK
G. Thomas Koester
Assistant Attorney General

You requested answers to several questions relating to oil and gas leasing. To comport with the time frame within which you needed answers to those questions, we advised you verbally. This memorandum is to memorialize those answers.

> "1. Are there any limitations in the oil and gas leasing law provisions relating to the leasing schedule against advancing entry on the schedule to an earlier date?"

In general, there are such limitations. In a January 16, 1980 Opinion (our file J-66-539-79) we pointed out that AS 38.05.180(c) appears to preclude advancing sales once a proposed oil and gas leasing program has been submitted. See Opinion, pp. 3-4.

In the context of the transitional schedule authorized by section 7, chapter 155 SLA 1978, however, the result is not as clear. All that is required under the transitional provision is that all areas to be leased in 1979 through 1983 be covered in the proposed program submitted to the First Session of the Eleventh Legislature. Leases issued in 1979, 1980 and 1981 would be valid if included in that program. An argument might be made that an area listed for 1981 could be leased in 1980, without the leases issued being ruled invalid, on the ground that the legislature did not tie lease validity to the sale occurring as scheduled.

However, we believe the intention of the legislature in the provisions requiring the submission of a five-year oil and gas leasing schedule was that there be sufficient prior notice of anticipated oil and gas lease sales to allow thorough public comment and discussion prior to leasing. Advancing a lease sale would be counter to this intent. For this reason, and because lease invalidity (or even the threat thereof) would diminish industry interest in a given

sale, it is our opinion that lease sales should not be advanced during the transitional years (1979-1981) without express legislative authorization.

> "2. What, if any, legislative history is there on AS 38.05.137? Do you believe that this section is completely open-ended regarding subject matter contained in oil and gas cooperative leasing agreements other than constitutional limitations?"

There is very little legislative history on AS 38.05.137. What little legislative history there is suggests that the statute is open-ended. AS 38.05.137 was part of SB 225, enacted as chapter 30 SLA 1964. SB 225 was introduced at Governor Egan's request. His January 31, 1964 transmittal letter to the legislature included a January 30, 1964 memorandum describing the purposes of the bill, including the proposed new section, AS 38.05.137. That purpose was described as follows: "Section 3 adds a new section, AS 38.05.137 which provides that the Commissioner of Natural Resources is authorized to enter into cooperative mineral leasing agreements with the United States regarding lands which are the subject of a title dispute between Federal and State authorities and further provides that any such lease need not conform to the provisions of state law applicable to state leases issued under the authority of AS 38.05." (Emphasis added.) (For ease of reference, copies of Governor Egan's transmittal letter and memorandum are attached.) Looking to introductory executive messages is an accepted method of determining legislative intent, Homer Electric Ass'n, Inc. v. City of Kenai, 423 P.2d 285 (Alaska 1967), and it appears to have been Governor Egan's intent to except leases on disputed lands from all provisions of AS 38.05.

Perhaps more importantly, that is what the literal language of the statute provides:

> The commissioner is authorized to enter into a cooperative mineral leasing agreements with the United States regarding lands which are the subject of a title dispute between federal and state authorities. Any such lease need not conform to the provisions of state law applicable to state leases issued under the authority of this chapter.

(Emphasis added.) Under the literal language of the statute, the commissioner is given broad discretion in entering into cooperative agreements with the federal government for the leasing of lands which are the subject of a title dispute

between the state and the federal government; that discretion appears bounded only by constitutional limitations. As a policy matter, of course, the commissioner might attempt to include in any such cooperative agreement terms and conditions which would permit leases issued to conform to the chapter, AS 38.05. However, this is not a legal requirement under the statute; the statute expressly excuses leases issued pursuant to a cooperative agreement from other provisions of the chapter.

> "3. Does AS 38.05.180 permit the Commissioner to specify that cash bonus bids be paid in installments? (e.g., 20% per year for 5 years)."

At the outset, we note that AS 38.05.180(f)(1)-(7), all of which require a "cash bonus bid," does not specify how the cash bonus must be paid to the state. The statute does provide (in part) that "[t]he commissioner may issue oil and gas leases on state land to the highest responsible qualified bidder determined by competitive bidding under regulations adopted by the commissioner." (Emphasis added.) AS 38.05.180(k) provides that "[t]he commissioner shall define all terms and adopt all regulations necessary for a reasonable understanding and evaluation of a particular bidding method for the public announcement of the terms of proposed sale employing that method." (Emphasis added.) Finally, AS 38.05.180(a)(1)(A)-(B) is a legislative finding that the people of Alaska have an interest in the development of the state's oil and gas resources to "maximize the economic and physical recovery of the resources" and "maximize competition among parties seeking to explore and develop the resources."

Reading these provisions together, it would seem permissible for the commissioner to adopt a regulation providing that cash bonuses are to be paid in installments. In Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971), regulations governing competitive bidding for oil and gas leases under AS 38.05.180 (prior to its amendment in 1978) were challenged. Specifically, plaintiffs urged that the commissioner's interpretation (by regulation) of the term "bonus" in the statute was inconsistent with the legislative enactment. The court held that it should not examine the content of the regulations to judge their wisdom but, where the regulations were adopted in accordance with statutory procedures and it appeared that the legislature intended to commit the matter forming the subject of the regulation to the discretion of the agency, the inquiry should be limited to whether the regulations were consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring

rule-making authority and then whether the regulations were reasonable and not arbitrary.

The regulations in Kelly v. Zamarello, supra, defined the word "bonus" in AS 38.05.180(a) as a cash bonus as opposed to a combination of cash and additional royalty. The court noted that the legislature had committed the type of bonus which would be accepted to the discretion of the commissioner. It also noted that "'. . .a reservation or a payment of a part or percentage of production under a lease which is to continue throughout the life of the lease is regarded as "royalty," and a sum certain to be paid in cash or out of production is regarded as "bonus."'" Kelly v. Zamarello, supra, at 913, quoting Griffith v. Taylor, 291 S.W.2d 673, 676 (Tex. 1956) (emphasis added by Alaska Supreme Court).

Under that definition of "bonus," a definition which the Alaska Supreme Court found neither unreasonable nor arbitrary, no particular method of payment is specified. While the precise question you have asked was not addressed in that case, the court did state:

> Similarly, it is not unreasonable for the Commissioner to determine that it is in the state's best interest to receive compensation for the leases immediately upon the award of the lease, rather than to wait for uncertain sums to arrive in the form of premium royalties. Plaintiffs would have this court substitute its judgment on the merits of cash bidding, but this we will not do.

Kelly v. Zamarello, supra, at 912. If it is not unreasonable for the commissioner to determine that a sum certain should be received immediately upon the award of the lease, it would seem not unreasonable for the commissioner to determine that the sum certain should be received in five annual installments. This seems particularly true in light of the legislative findings that maximizing the economic recovery of the resources and maximizing competition among parties seeking to explore and develop those resources is in the public interest.

For the foregoing reasons, we believe it would be permissible for the commissioner to specify that cash bonus bids were to be paid in installments. Such a specification should be by regulation, as it would represent a policy formulation, see Kelly v. Zamarello, supra, at 909, under what the Alaska Supreme Court has described as "the commissioner's broad authority" concerning competitive bidding procedures. Champion Oil Co. v. Herbert, 578 P.2d 961, _____ (Alaska 1978).

"4. In Section 38.05.180(f), it is stated that 'following a pre-sale analysis, the Commissioner may choose at least one of the following leasing methods'. What constitutes a pre-sale analysis for purposes of law?"

There is no definition of "pre-sale analysis" in the statute, and nothing in the way of legislative history to indicate precisely what the legislature meant by that term. It appears, however, that the pre-sale analysis contemplated by the legislature is a procedural safeguard to ensure that the state receives the maximum return for its oil and gas resources. We believe the legislature contemplated that the commissioner would evaluate a number of variables (e.g., geologic prospects, including the probability of discovering oil and gas in paying quantities, projected market factors, financial condition of the industry, the state's economic outlook, etc.) in an attempt to maximize the state's return on its resources. The legislature left the details of that analysis to your department's expertise.

It is obvious that the number of variables, coupled with the length of time for which projections must be made (i.e., ten years from lease sale to producing status plus the life of the field), makes such an analysis problematic at best. Given this reality, should your "pre-sale analysis" be challenged in court, the inquiry would not be directed at the precise result of that analysis (i.e., the precise mix of bidding systems selected); rather, the inquiry would be directed to determining whether the analysis performed provided a reasonable basis for the ultimate decision reached.

For example, in Moore v. State, 553 P.2d 8 (Alaska 1976), the Kachemak Bay oil and gas lease sale was challenged on the ground that the Director of the Division of Lands failed to determine that the sale would best serve the interest of the state, as required by AS 38.05.035(a)(14). In holding that this question was judicially reviewable, the court stated:

> The legislative procedural directive of AS 38.05.035(a)(14) requires of the Director an independent, recent evaluation of a proposed sale. Although he is not expressly obligated to make a formal written finding, he must at a minimum establish a record which reflects the basis for his decision. 20/

20/ The purpose of this record is not to enable the court to undertake an elaborate reconsideration of the substantive merits of the Director's decision at some later date. Under the constitutional principles discussed previously, this court has neither the authority nor competence to decide whether the public interest is "best served" by a proposed disposition of land. Nonetheless, a limited review of the Director's decision would be available simply to ensure that it was not arbitrary, capricious, or prompted by corruption. A record is necessary to facilitate this check, as illustrated by an earlier decision involving review of another discretionary executive decision. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92, 98-99 (Alaska 1974), was a challenge to a decision of the Commission to authorize incorporation of the North Slope Borough. We said (emphasis added):

> [The] Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. Necessarily this is an exercise of delegated legislative authority to reach basic policy decisions. Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the Commission's reading of the standards and its evaluation of the evidence.

See also Jager v. State, 537 P.2d 1100 (Alaska 1975); Swindel v. Kelly, 499 P.2d 291 (Alaska 1972).

553 P.2d at 35-36.

Applying the rationale of Moore v. State, supra, to the pre-sale analysis question, it is obvious that the legislature has given the commissioner broad discretion in choosing one or more of the authorized leasing methods. As a procedural safeguard, he is required to make a "pre-sale analysis" before selecting one or more of the methods authorized. A judicial review of his decision will not address the merits of that decision so much as the record developed as a part of the analysis. While we have only limited familiarity

with the technical details of the analysis performed prior to the recent joint federal-state Beaufort Sea oil and gas lease sale, we believe it was the type of analysis contemplated by the legislature, the analysis that a prudent trustee of public land would perform prior to making a decision on disposition of an interest in that land.

"5. Under existing state oil and gas law, may the Commissioner engage in two stage leasing of tracts, the first stage being for exploration and the second being for development?"

Our initial answer to this question was that, while we believed it legally possible for the commissioner to engage in two-stage leasing under the existing statute, we would urge that you obtain express legislative authority for such a practice prior to doing so. On further reflection, while it appears that an argument can be made if such a practice is permissible, it is unlikely that that argument would prevail.

At the outset, we note that the state has never practiced such leasing, and engaging in two-stage leasing at this time would be a marked departure from past administrative practice and construction of the statutes authorizing the leasing of state lands for oil and gas development.

Moreover, AS 38.05.180(f) authorizes seven specific methods for leasing state lands for oil and gas development, all of which call for a cash bonus plus a royalty share of production and/or a share of net profit derived from the lease. Both the royalty share and the net profit share component of the authorized bid methods require production from the lease. Accordingly, it appears that AS 38.05.180 does not authorize exploratory leasing.

Any argument that existing law authorizes such a practice would stem from the commissioner's general powers under AS 38.05.020, and would be weak at best. If it is your desire to initiate such a practice, we suggest that you first obtain express legislative authorization.

"6. Under AS 38.05.180(j), the Commissioner may adopt regulations to allow for the reduction of royalty on leases, to compensate for increased costs in later stages of production decline. How much latitude may the Commissioner include in such regulations? Could they, for example, be sufficiently flexible to permit the Commissioner to specify the royalty rate on a month-by-month basis at his discretion?"

Again, Kelly v. Zamarello, 486 P.2d 905 (Alaska 1971), is instructive: Where the legislature intended to commit a particular matter to agency discretion, the Supreme Court first will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency to ensure that the agency has not exceeded the power delegated by the legislature, and then will determine whether the regulation is reasonable and not arbitrary. Within these broad guidelines, the Commissioner has considerable flexibility, including (it would appear) sufficient flexibility to specify the royalty rate on a month-by-month basis. All that the statute requires is that the regulations "allow reduction of royalty;" it does not specify the details how that is to be accomplished. Those details have been left to the commissioner's discretion.

We hope this answers your questions. We have been somewhat hampered in answering these questions (as well as preparing the new oil and gas lease form, our file A-66-139-78, and interpreting the scheduling provisions of AS 38.05.180(b)-(e), our file J-66-539-79) by the lack of legislative history of AS 38.05.180. Because it appears that we will operating under this statute for some time, and certainly the Beaufort Sea oil and gas leases will be interpreted with respect to the statute as it now exists, it would be advisable for transcripts of the legislative deliberations on HB 854 (Tenth Alaska Legislature) to be prepared. We bring this matter to your attention at this time in the hope that this undoubtedly lengthy project can be initiated now rather than waiting until a judicial proceeding is initiated.

If you have further questions, we are at your disposal.

GTR:dlm

January 31, 1964

Honorable Lester Bronson
Chairman, Senate Rules Committee
Alaska State Legislature
Juneau, Alaska

Dear Senator Bronson:

Pursuant to State law and the Uniform Rules of the Legislature, I am submitting for introduction a bill to amend and add to the State Land Act.

The purposes of the bill are explained in the attached memorandum from the Department of Law dated January 30, 1964.

Sincerely,

William A. Egan
Governor

GT:lr

cc: Law
Natural Resources

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / BOX 2170 — JUNEAU

January 30, 1964

MEMORANDUM

TO: William A. Egan
Governor

FROM: John K. Brubaker
Assistant Attorney General

RE: An Act to change and add provisions to AS 38.05, the State Land Act

Enclosed is a bill which was drafted at the request of the Department of Natural Resources. The purposes of this bill are as follows:

1. Section 1 provides that orders classifying lands issued by the commissioner after January 3, 1959, are not required to be adopted under the Administrative Procedures Act, AS 44.62. The reason that this change is necessary is to eliminate any question as to whether or not orders by the commissioner of natural resources classifying lands are regulations which must be adopted under the provisions of the Administrative Procedures Act. The commissioner has, since statehood, classified lands by internal departmental orders and it has been generally recognized that he possesses the power to do so without conforming to the procedures for adopting regulations under the Administrative Procedures Act. Recently, however, in a court proceeding the issue was raised as to whether the commissioner possessed the power to make orders classifying lands without complying with the procedures for adopting regulations under the Administrative Procedures Act. The case has been dropped. It has become necessary, however, to introduce a bill to clarify the power of the commissioner to make orders classifying lands.

2. Section 2 repeals and re-enacts AS 38.05.135 exactly as it presently appears in the Alaska Statutes. This provision was changed inadvertently when it was incorporated into the Alaska Statutes. The purpose of this provision is to have AS 38.05.135 re-enacted to clarify the legislative intent.

3. Section 3 adds a new section, AS 38.05.137 which provides that the commissioner of natural resources is authorized to enter into cooperative mineral leasing agreements with the United States regarding lands which are the subject of a title dispute between Federal and state authorities and further provides that any such lease need not conform to the provisions of state law applicable to state leases issued under the authority of AS 38.05.

4. Section 4 adds a new section (b) to AS 38.04.145. The purpose of this section is to clarify the State Land Act by placing the present AS 38.05.180(f) in AS 38.05.145. This change makes new subsection (b) of AS 38.05.145 applicable to all Leasing Act minerals, whereas due to its present location in the Act it applies only to oil and gas.

5. Section 5 deletes a sentence from 38.05.180(a) in order to make it consistent with 38.05.135.

6. Section 6 amends AS 38.05.180(d) to permit extension of the term of a lease if all or part of the lease is included in an approved unit line for program of secondary recovery operation to bring about or restore production.

7. Section 7 amends AS 38.05.180(e) by changing the word "competitive" to "noncompetitive." The word "non-competitive" was inadvertently changed in the Alaska Statutes. The purpose of the amendment is to make the language of AS 38.05.180(e) conform to that of the original enactment.

8. Section 8 repeals AS 38.05.180(f) which is incorporated in this bill as AS 38.05.145(b).

9. Section 9 repeals AS 38.05.180(i) which is obsolete.

10. Section 10 amends AS 38.05.180(k) to provide that an assignee of a Federal lessee, as well as the lessee himself, may exercise the preference right for a state lease on shore lands included inside the exterior boundaries of a Federal lease. The section deletes the requirement that the application for the preference be made 60 days after the issuance of the Federal lease. This section also specifically provides that the state preference shall terminate if the Federal lease is terminated for any reason.

11. Section 11 amends AS 38.05.300 to provide that no state land, water, or land and water area shall,

except by act of the state legislature, be closed to multiple purpose use if the area involved contains more than 640 acres. Section 38.05.300 as it presently reads is misleading because it carries the implication that classification of tracts of land over 640 acres by the commissioner withdraws the land from being used for the purposes specified in AS 38.05.300(1), (2) and (3). This is not the case. The classification of land is a temporary designation and merely indicates that it presently appears that the wisest and best use of the land would be for the purpose indicated in a classification. The legislature therefore provided that tracts of land over 640 acres could not be withdrawn from settlement, location, sale or entry, reserved for special use, or restricted from operation of the mining and mineral leasing provisions of this chapter if the area involved in withdrawal, reservation or restriction exceeds in the aggregate of 640 acres except by act of the legislature. Under this provision should lands be classified as grazing and timber lands the classification would be ineffective without a ratifying act of the legislature. The proposed amendment would allow the preliminary classification of tracts of land larger than 640 acres, subject to change of classification from time to time at the discretion of the commissioner in order to assure multiple purpose use. Lands could be closed to multiple purpose use only by an act of the legislature.

12. Section 12 repeals and re-enacts AS 38.05.365(14). The purpose of this section is to remove the present citation to 38 Stat. 1214, as amended by 48 U.S.C. 353 which was repealed by sec. 6(k) of the Statehood Act, and insert in its place a citation to sec. 6(k).

13. Section 13 provides that section 1 of the act insofar as it applies to orders classifying lands issued after January 3, 1959, is expressly declared to be retroactive.

Respectfully submitted,

GEORGE N. HAYES
ATTORNEY GENERAL

By John K. Brubaker
John K. Brubaker
Assistant Attorney General

JKB:eb

STATE OF ALASKA
THE LEGISLATURE

POUCH V STATE CAPITOL
JUNEAU ALASKA 9981[illegible]
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M May 5, 1982

SUBJECT: "Uninterpreted data" as the term is used in CSHB 2 (Fin) am

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: Richard A. Bradley
Legislative Counsel

You have asked that I offer some comments on the meaning of the term "uninterpreted data" as it is used in subsection (aa) to AS 38.05.180 as added in CSHB 2(Fin) am.

The term is undefined in the bill and does not appear otherwise within the Alaska Statutes. The term "noninterpretative data" is used in AS 38.05.180(x) and seems to have the same meaning as "uninterpreted data". The difference between sec. 180(x) and sec. 180(aa) is that the former applies to existing leases and the latter applies to exploratory work before a lease.

Its meaning does not seem obscure -- though it may be.

The provision of law to which the amendment pertains is AS 38.-05.180, a section permitting "Oil and Gas Leasing" and dealing, among other things, with an "exploration", an 'exploratory well", as well as "geophysical work . . . performed [before a] lease sale. . . ." [Sec. 180(i).]

And as suggested, sec. 180(x) requires that the commissioner be provided access to "all noninterpretative data" obtained from a lease of oil or gas.

What I have assumed was being described here was the core samples and similar geological material obtained from exploratory drilling activities. As such, they would be "uninterpreted" in the sense that their implications for the presence, absence, or quantity of oil or gas or other minerals

have not been made. Those interpretations when made at a later time would be, in the usual situation, proprietary and be retained by the driller or the entity for which the exploratory drilling was made.

But in discussing this question with Resa King this morning, it is assumed by some individuals that it is not raw geological data that is being requested by the state or that the state is seeking access to but rather computer analyses of the raw geological data. The question then becomes at what point the computer analysis is stopped and further analyses are done for either proprietary purposes or by the Department of Natural Resources for evaluation of the state land.

It is clear that the information is useful to the department. It is useful to the department as it makes the same determinations that the oil companies make in their bids for state land: what is the land worth? But if the question is when the analysis is stopped or rather when computer processing turns data from its status as "uninterpreted" to "interpreted," then I agree that the term is ambiguous and further refinement of it is necessary.

I do note that existing law requires oil companies to provide "noninterpretative data obtained from the lease." [Sec. 180(x).] To that extent, there is an existing practice which apparently has meaning; the answer may simply be to require the same information now required under leases from the exploratory procedures. To accomplish that, would delete (aa) and amend (x) appropriately.

If I may assist further, please advise.

RAB:jdn

Alaska State Legislature

SENATE
Resources Committee

Offical Business

POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

TO: Senator Fahrenkamp
Chairman

DATE: 5/6/82

FROM: Resa King R.K.
Staff

RE: Cut-and-paste of SCS CSHB 2 and letter of intent.

Attached is the requested cut-and-paste of SCS CSHB 2.

Since the meeting this morning a couple of suggestions have arisen:

1. Found another "he" on page 2, line 16 - that you may want to neuter.

2. (15) Senator Fischer proposed an amendment for page 2, after line 19 - dealing with not being eligible for homsteading if a person has received 5 acres or more of state land.

3. Senator Rodey may be delivering a memorandum expressing a desire for language resolving the problem of not being able to obtain a loan inorder to construct a habitable dwelling.

4. Letter of Intent - in putting the three letters together, with attachment, is now three pages.

Original sponsors: Beirne, Bettisworth and Randolph

Offered: 4/6/82
Referred: Rules

IN THE HOUSE BY THE FINANCE COMMITTEE

SCS CS FOR HOUSE BILL NO. 2 (Finance) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to land; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.05.082(a) is amended to read:

(a) The director, with the approval of the commissioner, may lease tide [AND] , submerged, and shore lands for fisheries development. Fisheries development includes the utilization of shore gill nets [OR] , set nets, or fish wheels for the taking of fish. Every lease issued under this section shall reserve to the public a right-of-way for access to navigable waters and other tide [AND] , submerged, and shore lands.

* Sec. 2. AS 38 is amended by adding a new chapter to read:

CHAPTER 09. HOMESTEAD ENTRY.

Sec. 38.09.010. HOMESTEAD ENTRY. (a) The director may designate and make available for homestead entry under this chapter state land available

(1) under AS 38.05.057; or

(2) under AS 38.05.077 unless the director determines that the land is more suitable for recreational or residential use.

(b) A homestead entry made under AS 38.05.057 may not exceed 320 acres.

(c) A homestead entry made under AS 38.05.077 may not exceed 160 acres.

(d) A person who has applied for or received state land under this chapter is not eligible for a loan under AS 03.10 for the habitable

dwelling or the clearing of the land required under AS 38.09.040.

Sec. 38.09.020. QUALIFICATIONS FOR HOMESTEAD ENTRY. A person is qualified to apply for a homestead entry under this chapter if the person is

(1) qualified under AS 38.05.057 to participate in the disposal of land by lottery; or

(2) qualified under AS 38.05.077 to make an entry under the remote parcel disposal procedures.

Sec. 38.09.030. APPLICATION FOR HOMESTEAD ENTRY. (a) A person who has staked the exterior boundaries of a homestead entry under AS 38.05.077 and a person who has been selected to purchase land designated for homestead entry by lottery shall apply for the homestead entry on a form prepared by the department.

(b) The department may charge a fee for filing an application under this chapter.

(c) A person applying for a homestead entry shall certify that he has not previously leased a remote parcel from the state or applied for homestead entry under this chapter within the eight years immediately preceding the date of the application.

(d) A person who has received more than 15 acres of state land is not eligible for land under this chapter.

Sec. 38.09.040. PATENT FOR HOMESTEAD ENTRY. (a) A person who has made a homestead entry under this chapter and filed an application under AS 38.09.030(a) is entitled to a patent if, within seven years from the date of the application, the applicant

(1) occupies the land for a total of 35 months;

(2) erects a habitable dwelling;

(3) clears and prepares for cultivation not less than

(A) one-fourth of the land entered if the land is limited to agricultural use; or

(B) one-eighth of the land entered if the land is not

limited to agricultural use;

(4) brushes the boundaries of the homestead entry and maintains the brushed boundaries so that they are easily visible from the ground;

(5) causes a survey of the homestead entry to be made that is acceptable to the director.

(b) The director shall require an applicant for homestead entry to submit proof necessary to establish compliance with the requirements of (a) of this section. An applicant is not required to submit proof under (a)(4) or (5) of this section if the land comprising the homestead entry has been surveyed.

(c) As used in this section, "habitable dwelling"

(1) means a permanent dwelling of not less than [400] 200 square feet and its fixtures and facilities;

(2) does not include a mobile home unless it is permanently attached to a permanent foundation.

Sec. 38.09.050. HOMESTEAD APPLICATION VOID. An application for homestead entry and the interest of the applicant under the homestead entry is void if the applicant fails to comply with a requirement of AS 38.09.040(a). On the request of the director, the attorney general shall bring an action to declare the homestead entry void and, if necessary, to eject the homestead applicant.

* Sec. 3. AS 38.04.020(g)(3) is amended to read:

(3) Land designated agricultural, commercial, industrial, or suitable for other disposal may (SHALL) be sold under AS 38.05.055 or 38.05.057. Land designated agricultural or suitable for disposal other than as commercial or industrial may be sold under AS 38.05.077.

* Sec. 4. AS 38.05.057(a) is amended to read:

(a) The commissioner may dispose of land, including land limited

to use for agricultural purposes, by lottery. The purchase price of land sold by lottery shall be the fair market value of the land as determined by the commissioner. The commissioner may sell land by lottery for less than the fair market value of the land if he determines that scarcity of land for private use in the area of the land to be sold has resulted in unrealistic land values. Before the commissioner determines the purchase price for land which is located in a municipality and which is to be sold under this section, he shall consult with the assessor of the municipality. The lottery shall be conducted in public by the commissioner or his representative. An applicant may not be selected to purchase land unless he is present on the date and at the place that the lottery is conducted unless medical reasons, attendance at school, or military service [OUTSIDE THE STATE] prevent attendance. [AN APPLICANT MAY BE REPRESENTED BY AN AGENT ON THE DAY OF THE LOTTERY IF THE LAND OFFERED FOR SALE IS COMMERCIAL, INDUSTRIAL, OR AGRICULTURAL LAND.] On the day of the lottery a purchaser selected by lot shall deposit an amount equal to five percent of the purchase price, or if the purchaser elects to use land discounts granted under AS 38.05.058, five percent of the purchase price after deduction of the discount. If the land is designated for homestead entry, the applicant selected by lottery for homestead entry must file an application under AS 38.09.030(a).

*Sec 5 "AS 38.04.021(a) is amended to read:

Sec. 38.04.021. Disposal of municipal [GRANT] land [ENTITLEMENTS]. (a) A municipality may apply for financial assistance for the execution of a land disposal program [OF GENERAL GRANT LAND ENTITLEMENTS RECEIVED FROM THE STATE UNDER AS 29.18.201 - 29.18.213] by submitting a request to the commissioner for inclusion in the request submitted to the legislature under AS 38.04.020(e). A municipality may request financial assistance for expenses of surveying land, designing subdivision plats, installing improvements required by municipal ordinance or regulation of the local platting board, and other reasonable direct costs of land disposal."

Senator Anderson

* Sec. 6. AS 38.05.077(a) is amended to read:

(a) The commissioner shall designate remote parcel selection areas and shall dispose of remote parcels in accordance with AS 38.04.020. The commissioner may set the number of remote parcels that may be selected in each remote parcel selection area. A remote parcel may be purchased under AS 38.05.078 or an applicant may receive a patent to a remote parcel under AS 38.09. A remote parcel purchased under AS 38.05.078 may not exceed 40 acres. A remote parcel acquired under AS 38.09.-

may not exceed 160 acres.

* Sec. 7. AS 38.05.077(b) is amended to read:

(b) The commissioner may designate remote parcel selection areas where staking will be restricted to aliquot parts when parcels are 40 acres or larger and shall prescribe parcel selection procedures for each remote parcel selection area designated under (a) of this section. The parcel selection procedures shall include

(1) the maximum size of a remote parcel that may be selected in the parcel selection area;

(2) (repealed)

(3) the minimum distance between remote parcels in the parcel selection area;

(4) parcel dimensions, configuration, orientation and other parcel design requirements;

(5) a description of land within the area that may not be included in a parcel;

(6) a requirement that landmarks, monuments or other points be used as points of reference for the measurement of distances within an area; and

(7) specification for the type of stakes to use to mark the corners of a parcel.

* Sec. 8. AS 38.05.077(d) is amended to read:

(d) Not later than 15 days after staking the exterior boundaries of a remote parcel, the person who staked the parcel shall file a sketch plat with the department which shows the location of the remote parcel. At the time of filing the sketch plat, the person who staked the parcel shall apply to lease the land or apply for homestead entry under AS 38.-09. An application [TO LEASE THE LAND] shall be on a standard form prepared by the department. The annual rental payment for the first

year of the lease shall be submitted to the department with the application. After the application to lease a remote parcel is approved, the commissioner shall offer to lease the land to the person who staked the remote parcel. A lease granted under this section shall contain the following terms:

(1) a remote parcel may be leased for five years;

(2) a remote parcel lease may be renewed at the option of the lessee for a second five-year period under the same terms as provided for the first five-year period of the remote parcel lease;

(3) a rental payment shall be paid annually and shall be $10 for each acre;

(4) unless the land is surveyed, the lessee shall, within one year of approval of the lease application and continuously for the lease period, physically delineate the boundaries of the parcel by brushing a line so that they are readily visible from the ground.

* Sec. 9. AS 38.05.077(i)(3) is amended to read:

(3) certify that he has not previously leased a remote parcel from the state nor made application for a homestead entry on state land within eight years immediately preceding the date of staking a remote parcel.

* Sec. 10. AS 03.10.030 is amended by adding a new subsection to read:

(g) A person who has received state land under AS 38.09 is not eligible for a loan under this chapter for improvements to that land before patent to the land has been received.

* Sec. 11. AS 38.05.180 is amended by adding a new subsection to read:

(aa) In order to achieve the purposes of this chapter the commissioner may require persons conducting geophysical exploration for oil or gas resources or drilling a stratigraphic test well on unleased state land to provide the commissioner with access to and copies of all uninterpreted exploration data acquired from these

DNR

confidential all exploration data submitted to the department under this subsection and any reproduction, analysis, processing, or interpretation of such data prepared by the department or any third party on behalf of the department which is based in whole or in part upon such data. Notwithstanding AS 11.56.860(c), any person, including any employee, agent or contractor of the State, who knowingly and willfully reveals any data or information required to be kept confidential under this subsection shall, upon conviction, be punished by a fine of not more than $50,000 or by imprisonment for not more than 10 years, or both. All agents or contractors of the department who have access to exploration data or information derived from the data submitted under this subsection shall execute and post a bond in an amount to be determined by the commissioner. The bond shall be to the benefit of the State and the permittee.

definition of exploration data.

Uninterpreted exploration data means all field data which have been initially processed and are ready for geologic and geophysical analysis, and associated material necessary to locate, identify, analyze, or interpret the field data. It is the intent of this definition that the permittee shall provide data which corresponds to the data which a geophysical contractor would provide participants in a group seismic survey.

* Sec. ~~31~~ 12. AS 38.05.180(aa) added by Sec. 10 of this Act applies to uninterpreted data acquired from geophysical surveys which were commenced on unleased state lands on or after January 1, 1982.

Page 6 - continued

* Section 13. The purpose of secs. 12-16 of this Act is to provide for the settlement of certain claims and litigation and to transfer legal title and management of university-grant lands from the Department of Natural Resources to the Board of Regents of the University of Alaska.

* Sec. 14. Nothing in secs. 12-16 of this Act precludes or prejudices negotiations between the Municipality of Anchorage and the University of Alaska to settle Case Number 3AN-79-2801 Civil, Third Judicial District, State of Alaska or prejudices or otherwise affects the pursuit or outcome of that litigation or diminishes or affects the rights or interests of the University of Alaska or the Municipality of Anchorage in that pending litigation.

* Sec. 15. The commissioner of the Department of Natural Resources is authorized and directed to convey to the Board of Regents of the University of Alaska all right, title, and interest of the State of Alaska in and to those university-grant lands identified in Appendices E and N in the document entitled "Settlement Agreement Between the Department of Natural Resources, the Department of Revenue, and the Department of Administration and the University of Alaska," which was submitted to the Alaska State Legislature on March 26, 1982, the date of the introduction of this bill, the terms of which are hereby ratified as to the duties and obligations of the State of Alaska and the Board of Regents of the University of Alaska. However, the compensation due the University in land or money shall be subject to further appropriation by the 1983 Legislature.

*Sec. 16. AS 14.40.170(a)(4) is amended to read:

(4) have the care, control and management of all the real and personal property of the university, including the management of those university-grant lands conveyed to the Board of Regents of the University of Alaska pursuant to sec. 15 of Committee Substitute for House Bill No. 2 (Finance)(Twelfth Legislature) in accordance with the purposes provided for by the Act of March 4, 1915 (38 Stat. 1214), as amended, and the Act of January 21, 1929 (45 Stat. 1091), as amended;

* Sec. 17 AS 14.40.170(a) is amended by adding a new paragraph to read:

(7) adopt reasonable rules providing for prudent trust management, and providing for adequate public notice of all sales, leases, exchanges or other dispositions of university-grant lands, or interests therein.

* Sec. 18. Sections 2 - 10 of this Act take effect July 1, 1982.

* Sec. 19. Sections 1, and 11 - 17 of this Act take effect immediately in accordance with AS 01.10.070(c).

SENATE RESOURCES COMMITTEE

LETTER OF INTENT

SCS CSHB 2(Res)

Sections 13 - 17 of this bill relate to the settlement of certain claims by the University of Alaska against the State of Alaska, Departments of Natural Resources, Administration, and Revenue.

It is the intent of the Senate Resources Committee in passing out Senate Committee Substitute for Committee Substitute for House Bill 2 (Resources) that the Board of Regents of the University of Alaska develop a plan for distribution of revenues derived from university lands to be submitted to the legislature by January 10, 1983. The Committee intends that in developing this plan the Board consider a policy of reinvesting part of the revenues from university lands located within the boundaries of local governments so as to benefit the people within such communities. The Committee further intends that such a policy give appropriate weight to statewide and other area's needs, while addressing the objective of benefiting communities near revenue-producing university lands.

The Committee further intends that the University and the Municipality of Anchorage negotiate to settle their claims presented in litigation (3AN 79 2801 Civil), Third Judicial District and that the two parties shall report to the legislature by the tenth day of the 1983 session on the results of their discussions.

As originally introduced in the Senate, this bill was accompanied by companion legislation, orginally SB 876, which provided funds to implement the Settlement Agreement between the State and the University date March 12, 1982.

The companion legislation, passed as part of the FY 83 budget, provided that $500,000 in lapsed funds of the University of Alaska be used to conduct research to determine the total dollar compensation due the University as a result of the Settlement Agreement. The funds will be used to employ independent professional fee appraisers to determine the fair market value of certain University-grant lands which have been utilized and/or disposed of by the State at less than fair market value, and to appraise certain state lands which might be conveyed to the University or relinquished to the State; to conduct research on financial transactions involving University grant-lands; and to process the quitclaim deeds necessary to convey clear title to all University-grant lands involved in the settlement.

Specifically, the Department of Law, as recipient of these funds, is to allocate $110,000 directly to the Department of Natural Resources and the balance of $390,000 directly to the University of Alaska, Statewide Office of Lanad Management. The attached budget contains a breakdown use of these funds.

PATRICK RODEY
ANCHORAGE

601 W. 5TH AVE. SUITE 820
ANCHORAGE, ALASKA 99501

DURING SESSION

POUCH V
JUNEAU, ALASKA 99811

1:30 pm

Alaska State Senate

JUNEAU, ALASKA 99811

MEMORANDUM

DATE: April 5, 1982

TO: All Members, Senate Resources Committee

FROM: Senator Rodey PMR

RE: Proposed Amendment to HB 2

Please find attached a proposed amendment to AS 38.08, Homesites, which I would request you include in the committee substitute for HB 2.

This amendment addresses the problem I'm sure you are all aware of, the "Catch 22" title problem in the Homesite program. The Homesite program requires an individual to build a habitable dwelling prior to receiving title to the land, but individuals attempting to borrow money to build a habitable dwelling cannot obtain financing because they don't have title.

Last year I authored a bill, SB 579, which would have established a loan guarantee account in Revenue to facilitate financing for individuals confronted with this situation. Although that would have solved the problem, I did not pursue it because, frankly, I can't quite see the need for us to have to appropriate and spend state money to accomodate a problem in state law that more properly could be handled by a simple change in statutory language.

As for criticism that this amendment would make the Homesite program a "freebie", I would argue that the purpose of the program is to make it possible for Alaskans to own a five-acre piece of land on which to establish a home - a homesite. The provision which restricts individiduals to one of these parcels during his/her lifetime seems to me to be adequate to ensure that no speculation takes place, and that in fact the purpose of the program is served.

I would urge the committee to adopt this amendment. Thank you.

AMENDMENT PROPOSED BY SENATOR RODEY

* Amend AS 38.08.060 by the deletion of (a)(1) and (a)(2), and renumber accordingly.

4/30/82 Exxon

FOR AN ACT ENTITLED: "An Act relating to state lands; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 9 AS 38.05.180 is amended by adding a new subsection to read:

(aa) (1) In order to assist the department in knowledgeably managing the development of oil and gas resources underlying state land, the commissioner may in his discretion require persons conducting geophysical exploration for oil or gas resources or drilling a stratigraphic test well on unleased state land to provide him with access to and copies of all field data and associated material necessary to locate, identify, process, analyze, or interpret the field data. The commissioner shall pay all reasonable costs of reproducing the data and associated material. (2) The commissioner shall keep the following confidential in accordance with AS 38.05.035(a)(9)(c).

A. All field data and associated material submitted to the department under this subsection, and

B. Any reproduction, analysis, processing, or interpretation of such data and associated material prepared by the department or by any third party on behalf of the department which is based in whole or in part, upon such data or associated material.

(3) The commissioner shall keep all exploration data and exploration information submitted to the department under this subsection confidential in accordance with AS 38.05.035(a)(9)(c). In the event a third party reproduces, analyzes, processes, or interprets such data or associated material on behalf of the department, the third party must agree in writing that it will not disclose the data or associated information derived or generated from the data to any other party and that it will not acquire any interest in the land evaluated by the data. The third party shall execute and post a bond in an amount to be determined by the director. The bond shall be to the benefit of the state and the permittee. All employees, agents, or contractors of the department who have access to exploration data or exploration information submitted under this paragraph are subject to AS 11.56.860.

* Section 10. This Act takes effect immediately in accordance with AS 01.10.070(c).

TRH:cas/410

FOR AN ACT ENTITLED: "An Act relating to state lands; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1 AS 38.05.180 is amended by adding a new subsection to read:

(v)(1) In order to assist the department in knowledgeably managing the development of oil and gas resources underlying state land, the commissioner may in his discretion require persons conducting geophysical exploration for oil or gas resources or drilling a stratigraphic test well on unleased state land to provide him with access to and copies of all field data and associated material necessary to locate, identify, process, analyze, or interpret the field data. The commissioner shall pay all reasonable costs of reproducing the data and associated material. (2) The commissioner shall keep the following confidential in accordance with AS 38.05.035(a)(9)(c).

A. All field data and associated material submitted to the department under this subsection, and

B. Any reproduction, analysis, processing, or interpretation of such data and associated material prepared by the department or by any third party on behalf of the department which is based in whole or in part, upon such data or associated material.

(3) Any person, including any employee, agent or contractor of the STate, who knowingly and willfully reveals any data or information required to be kept confidential by this subsection shall, have committed an offense classified as a Class B felony pursuant to AS 11.81.250. (4) Whenever any employee of the State reveals information in violation of this section, the permittee who supplied such information to the department, and any person to whom such permittee has sold such information under promise of confidentiality, may commence a civil action for damages in the appropriate superior court of the State of Alaska against the state. In any action commenced against the state pursuant to this subsection, the state may not raise as a defense any claim of sovereign immunity or any claim that the employee who revealed the confidential information which is the basis of such suit was acting outside the scope of his employment in revealing such information. (5) Any provision of state or local law which provides for public access to any data or associated material received or obtained by any person pursuant to this subsection (as well as any reproduction, analysis, processing, or interpretation of such data or associated material by the department or by any third party on behalf of the department) is expressly preempted by the provisions of this subsection, to the extent that it applies to such data and associated material, or reproduction, analysis, processing or interpretation of such data or associated material by the department or by any third party on behalf of the department.

* Section 2. This Act takes effect immediately in accordance with AS 01.10.070(c). This act shall apply only to raw field data and associated materials acquired from permits issued after the effective date of this Act.

TRH:cas/410

The attached language specifically relates to the University of Alaska grant lands section of HB 2.

This language should be substituted for the lang[illegible] currently contained in HB 2. It is the language passed from this committee with the exception of clarifying verbage in Section 14 specifying that the settlement is contingent upon additional legislation and appropriation by the 1983 Legislature.

The language substitute is supported by the Department and the University Board of Regents.

* Section 12. The purpose of secs. 12-16 of this Act is to provide for the settlement of certain claims and litigation and to transfer legal title and management of university-grant lands from the Department of Natural Resources to the Board of Regents of the University of Alaska.

* Sec. 13. Nothing in secs. 12-16 of this Act precludes or prejudices negotiations between the Municipality of Anchorage and the University of Alaska to settle Case Number 3AN-79-2801 Civil, Third Judicial District, State of Alaska or prejudices or otherwise affects the pursuit or outcome of that litigation or diminishes or affects the rights or interests of the University of Alaska or the Municipality of Anchorage in that pending litigation.

* Sec. 14. The commissioner of the Department of Natural Resources is authorized and directed to convey to the Board of Regents of the University of Alaska all right, title, and interest of the State of Alaska in and to those university-grant lands identified in Appendices E and F in the document entitled "Settlement Agreement Between the Department of Natural Resources, the Department of Revenue, and the Department of Administration and the University of Alaska," which was submitted to the Alaska State Legislature on March 26, 1982, the date of the introduction of this bill, the terms of which are hereby ratified as to the duties and obligations of the State of Alaska and the Board of Regents of the University of Alaska. However, the compensation due the University in land or money shall be subject to further appropriation by the 1983 Legislature.

*Sec. 15. AS 14.40.170(a)(4) is amended to read:

(4) have the care, control and management of all the real and personal property of the university, including the management of those university-grant lands conveyed to the Board of Regents of the University of Alaska pursuant to sec. 14 of Committee Substitute for House Bill No. 2 (Finance) (Twelfth Legislature) in accordance with the purposes provided for by the Act of March 4, 1915 (38 Stat. 1214), as amended, and the Act of January 21, 1929 (45 Stat. 1091), as amended;

* Sec. 16 AS 14.40.170(a) is amended by adding a new paragraph to read:

(7) adopt reasonable rules providing for prudent trust management, and providing for adequate public notice of all sales, leases, exchanges or other dispositions of university-grant lands, or interests therein.

to land; and providing for an effective date.

Sections 12-16 of this bill relate to the settlement of certain claims by the University of Alaska against the State of Alaska, Departments of Natural Resources, Administration, and Revenue. This bill was accompanied by companion legislation, originally S.B. 876, which provided funds to implement the Settlement Agreement between the State and the University dated March 12, 1982.

The companion legislation, passed as part of the FY 83 budget, provided that $500,000 in lapsed funds of the University of Alaska be used to conduct research to determine the total dollar compensation due the University as a result of the Settlement Agreement. The funds will be used to employ independent professional fee appraisers to determine the fair market value of certain University-grant lands which have been utilized and/or disposed of by the State at less than fair market value, and to appraise certain state lands which might be conveyed to the University in lieu of the payment of monetary damages; to analyze University-grant lands which are currently under lease to determine which lands should be retained by the University or relinquished to the State; to conduct research on financial transactions involving University-grant lands; and to process the quitclaim deeds necessary to convey clear title to all University-grant lands involved in the settlement.

Specifically, the Department of Law, as recipient of these funds, is to allocate $110,000 directly to the Department of Natural Resources and the balance of $390,000 directly to the University of Alaska, Statewide Office of Land Management. The attached budget contains a breakdown of these funds.

EXXON COMPANY, U.S.A.
POUCH 6601 • ANCHORAGE, ALASKA 99502

LAW DEPARTMENT
THERESA R. HEBERT
ATTORNEY

April 29, 1982

Mr. Ed Gall[illegible]n
Houston

Mr. Ebert Baxter called with the following information on costs of acquisition versus processing of seismic data on the North Slope. The GSI quotes were taken from the 1982 GSI Hardwater Group Survey Agreement in Alaska while the Western Geophysical and CGG figures were developed from Mr. Baxter's phone conversations with Western and CGG.

	Case 1	Case 2	Case 3	Case 4
	96 trace 24 fold 220' group interval	96 trace 48 fold 220' group interval	96 trace 24 fold 110' group interval	96 trace 48 fold 110' group interval
	Processing	**Processing**	**Processing**	**Processing**
GSI	$810/mile	$1,320/mile	$1,620/mile	$2,640/mile
Western	$450/mile	$ 850/mile	$ 850/mile	$1,560/mile
CGG	$540/mile	$ 888/mile	$ 888/mile	$1,610/mile

	Acquisition-Case 1 only
GSI*	$15,000/mile
Western**	$15,000/mile
CGG	$15,460/mile

* GSI has a per hour contract, so figure represents historical average.
** Not able to verify, but figure represents approximate historical average.

In response to my questions, Mr. Baxter stated that Cases 1 and 2 are normally utilized for upland areas and onshore, while Case 4 was utilized over ice this year. He also stated that a normal crew will run approximately 500 miles of data even though some crews will run up to 800-900 miles, and that there are currently over 10 crews working on the North Slope.

In summary, it appears that a normal shoot (500 miles) would cost $7,500,000 to acquire and $375,000 (using $750/mile as an average) to process. Assuming the legislation is passed in its present form and the state is not selective in choosing which data to acquire (which is highly unlikely), the state would acquire $75,000,000 worth of raw field data and $3,750,000 worth of processed data from the approximately ten crews working this year, at very little cost to the state.

Theresa R. Hebert

Theresa R. Hebert

TRH:cas/427

HB2.

EXXON COMPANY, U.S.A.
POUCH 6601 • ANCHORAGE, ALASKA 99502

LAW DEPARTMENT
THERESA R. HEBERT
ATTORNEY

April 27, 1982

Doug East
Juneau

I have received a copy of the amendment to SB 875 and offer the following comments:

1. This amendment did not delete the language which provides that this bill will allow the commissioner to conduct the pre-sale analysis required by AS 38.05.180(f). For the reasons listed in my April 6, 1982 letter to Max Nalley, we should still oppose this language. I suspect that my discussion with Mary Halloran on this point was not communicated to Katz.

2. Obviously, the amendment would give the Commissioner access to raw field data and processed data. My prior comments remain the same.

3. The confidentiality requirement was not extended to any reproduction, analysis, processing, or interpretation of our data prepared by the DNR or third parties on behalf of the DNR, as Mary Halloran agreed. Please see my April 21 letter to R. H. Weaver for a discussion of this point and the draft language which would extend the confidentiality requirement.

4. This amendment removes a beneficial provision making agents and contractors subject to AS 11.56.860. Although AS 11.56.860 (Misuse of Confidential Information-Class A Misdemeanor) is not a sufficient penalty for knowing and willful release of confidential information, if the provision is retained, it should be made applicable to agents and contractors of the State (which the earlier amendments did).

All other comments contained in my April 21 letter to Mr. Weaver remain the same.

Theresa

Theresa R. Hebert

TRH:cas/420
xc: J. C. Dale
M. F. Harmon
M. D. Nalley
R. H. Weaver

NOTES TO DECISIONS

Cited in North Slope Borough v. Sohio Petroleum Corp., Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Sec. 01.10.080. Computation of time.

NOTES TO DECISIONS

Civ. R. 6(a) on computation of time is similar to this section in certain regards. David v. Sturm, Ruger & Co., Sup. Ct. Op. No. 1356 (File No. 3141), 557 P.2d 1133 (1976).

Legislative intent.

The phrase "unless the last day is a holiday, and then it is also excluded" was intended by the legislature to exclude a Saturday when court is not in session and the office of the clerk is closed. David v. Sturm, Ruger & Co., Sup. Ct. Op. No. 1356 (File No. 3141), 557 P.2d 1133 (1976).

When the act required to be performed within a certain period of time is the filing of pleadings with the court, the manifest intent of the legislature appears to require exclusion of the last day from the computation if it should fall on a day when the courts are closed. David v. Sturm, Ruger & Co., Sup. Ct. Op. No. 1356 (File No. 3141), 557 P.2d 1133 (1976).

"Holiday" defined. — "Holiday" has been defined as "a day upon which the usual operations of business are suspended and the courts closed, and, generally, no legal process is served." David v. Sturm, Ruger & Co., Sup. Ct. Op. No. 1356 (File No. 3141), 557 P.2d 1133 (1976).

For the purpose of this section, Saturday is a court holiday. David v. Sturm, Ruger & Co., Sup. Ct. Op. No. 1356 (File No. 3141), 557 P.2d 1133 (1976).

Applied in Silides v. Thomas, Sup. Ct. Op. No. 1362 (File Nos. 3019, 3020, 3021), 559 P.2d 80 (1977).

Sec. 01.10.090. Retrospective statutes.

NOTES TO DECISIONS

Courts do not infer retroactive operation of statutes in ambiguous circumstances. Wien Air Alaska v. Arant, Sup. Ct. Op. No. 1796 (File Nos. 3620, 3717), 592 P.2d 352 (1979).

Curative legislation. — The general rule of construction of curative legislation is that retroactivity will be ascribed to it more readily than to that which may disadvantageously, though legally, affect past relations and transactions. Zurfluh v. State, Sup. Ct. Op. No. 2238 (File No. 4697), 620 P.2d 690 (1980).

Procedural changes. — This section does not address the procedural-substantive distinction. Nevertheless, the settled rule of law is that mere procedural changes which do not affect substantive rights may be applied retrospectively. Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

Restraint of Trade Act. — The Attorney General did not retrospectively apply the Restraint of Trade Act, AS 45.50.562 — 45.50.596, by requesting documents executed prior to the effective date of the statute. A party suffers no increased liability as a result of the state's investigatory procedure nor does the procedure otherwise affect a party's substantive rights. Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

The statutory changes in the power to investigate brought about by AS 45.50.590 et seq. affect only procedure and that mere procedural changes which do not affect substantive rights are not immune from retrospective application. Matanuska Maid, Inc. v. State, Sup. Ct. Op. No. 2223 (File Nos. 4640, 4641), 620 P.2d 182 (1980).

1970 amendment to AS 47.10.080 not retroactive. — Refusal to give retrospective effect to the 1970 amendment to AS 47.10.080 reducing the maximum age of commitment of juvenile

delinquents to 19 years of age is bolstered by this section. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

There is nothing in the amendatory legislation to AS 47.10.080 that indicates an intention that the sentence reduction should operate retrospectively. Davenport v. McGinnis, Sup. Ct. Op. No. 1049 (File No. 1942), 522 P.2d 1140 (1974).

Applied in State v. Kaatz, Sup. Ct. Op. No. 1536 (File No. 3080), 572 P.2d 775 (1977); City of Juneau v. Commercial Union Ins. Co., Sup. Ct. Op. No. 1906 (File Nos. 4040, 4041), 598 P.2d 957 (1979).

Cited in Morgan v. State, Sup. Ct. Op. No. 913 (File No. 1527), 512 P.2d 904 (1973).

Sec. 01.10.100. Effect of repeals or amendments.

NOTES TO DECISIONS

Construction of general saving clause. — In accord with original. See Alaska Pub. Util. Comm'n v. Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, City of Juneau v. Thibodeau, 595 P.2d 626 (1979).

A general saving statute will save rights and remedies except where a subsequent repealing act indicates that it was not the legislative intention that particular rights and remedies should be saved. Alaska Pub. Util. Comm'n v. Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, City of Juneau v. Thibodeau, 595 P.2d 626 (1979).

"Right" means vested right.

The term "right" has been construed to mean a vested right. Alaska Pub. Util. Comm'n v. Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, City of Juneau v. Thibodeau, 595 P.2d 626 (1979).

And vested property rights, etc.

In accord with original. See Alaska Pub. Util. Comm'n v. Chugach Elec. Ass'n, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, City of Juneau v. Thibodeau, 595 P.2d 626 (1979).

Effect of AS 42.05.421(b) on rights of previously certificated utility. — See Alaska Pub. Util. Comm'n v. Chugach Elec. Ass'n, Sup. Ct. Op. No. 1639 (File Nos. 2969, 2993), 580 P.2d 687 (1978), overruled on other grounds, City of Juneau v. Thibodeau, 595 P.2d 626 (1979).

Repeal by referendum. — In Alaska the referendum operates as a repeal. State ex rel. Hammond v. Allen, Sup. Ct. Op. No. 2278 (File No. 5056), 625 P.2d 844 (1981).

Effect of filing referendum petition before effective date of statute. — Even though a referendum petition was duly filed over three months before the effective date of AS 39.37.010 — 39.37.150 [January 1, 1976], the rights accrued under the elected public officers retirement system were not subject to any implied condition subsequent of repeal by the electorate, and those rights remain fully enforceable. State ex rel. Hammond v. Allen, Sup. Ct. Op. No. 2278 (File No. 5056), 625 P.2d 844 (1981).

Even assuming the extreme likelihood of the subsequent repeal of a legislative enactment, Alaska Const., art. XII, § 7, and subsection (a) of this section preclude the finding of an implicit condition subsequent in the contracts between participants in the elected public officers retirement system [former AS 39.37.010 — 39.37.150] and the state of Alaska, since subsection (a) provides that "[t]he repeal ... of any law does not release or extinguish any ... liability incurred or right accruing or accrued under such law" and finding a condition subsequent to be implicit in the contract under consideration would undermine Alaska Const., art. XII, § 7. State ex rel. Hammond v. Allen, Sup. Ct. Op. No. 2278 (File No. 5056), 625 P.2d 844 (1981).

Applied in B-C Cable Co. v. City of Juneau, Sup. Ct. Op. No. 2112 (File No. 4587), 613 P.2d 616 (1980).

Cited in State v. Kaatz, Sup. Ct. Op. No. 1536 (File No. 3080), 572 P.2d 775 (1977).

law at 12:01 a.m. on the day after it is signed by the governor or on the day after he has given written notice that he is allowing the law to become effective without his approval.

(d) A law which specified a definite effective date becomes effective at 12:01 a.m., Pacific Standard time, on the date specified. (§ 5 ch 62 SLA 1962; am § 8 ch 126 SLA 1966)

Effect of amendment.—The 1966 amendment rewrote this section.

Sec. 01.10.080. Computation of time. The time in which an act provided by law is required to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded. (§ 6 ch 62 SLA 1962)

This section was taken from the laws of Oregon. Mahan v. Sparks, 10 Alaska 292 (1942); Lowe v. Hess, 10 Alaska 174 (1941).

It merely states the common-law rule. Lowe v. Hess, 10 Alaska 174 (1941).

This statutory computation is declaratory of the common-law rule in Alaska. Turnbull v. Bonkowski, 274 F. Supp. 733 (D. Alas. 1967).

Alaska's computation-of-time statute merely expresses the common law. Turnbull v. Bonkowski, 419 F.2d 104 (9th Cir. 1969).

Common law.—At common law it was established if the last day on which an act was to be performed fell on a Sunday, then that Sunday was excluded and the time was extended to the following day Wade v. Dworkin, Sup. Ct. Op. No. 306 (File No 603), 407 P.2d 587 (1965).

The common-law rule is that when the period of time within which an act is to be performed exceeds one week, an intervening Sunday is included in the computation. Wade v. Dworkin, Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Legislative intent.—The legislature, by virtue of its enactment of this section, manifested its intent to exclude Sundays in the computation of time only when Sunday falls on the last day of a period in question. Wade v Dworkin, Sup. Ct. Op. No 306 (File No. 603), 407 P.2d 587 (1965)

Exception in common law as to computation of person's age.—There exists a well-recognized exception in the common law as to the computation of a person's age. This exception, briefly stated, is that a year must be counted, not from the day of birth, but from the preceding day when limitation is figured. Turnbull v. Bonkowski, 274 F. Supp. 733 (D. Alas. 1967).

The computation-of-time statute is expressive of only the general common-law rule and does not presume to abrogate the well-established exception thereto governing the computation of a person's age. It follows that the statute has no application in calculating a person's age. Turnbull v. Bonkowski, 419 F.2d 104 (9th Cir. 1969).

The supreme court is enjoined by the legislature to observe the provisions of AS 01.10.020, in resolving any issue relating to this section and its applicability to the five-day recount provision of AS 15.20.430. Wade v. Dworkin, Sup Ct. Op No. 306 (File No. 603), 407 P.2d 587 (1965).

Computing limitation under AS 15.20.430.—In computing the five-day period of limitation prescribed by AS 15.20.430, an intervening Sunday is to be included Wade v Dworkin. Sup. Ct. Op. No. 306 (File No. 603), 407 P.2d 587 (1965).

Computation of the limitations period provided by AS 09.10.070 subsequent to the removal of the disability of minority is to be made by excluding the first day and including the last. Turnbull v. Bonkowski, 274 F. Supp. 733 (D. Alas. 1967).

Filing appeal.—Under this section, the day on which the judgment is entered should be excluded in computing the time within which an application for an appeal must be filed Mahan v. Sparks, 10 Alaska 292 (1942).

Sec. 01.10.090. Retrospective statutes. No statute is retrospective unless expressly declared therein. (§ 7 ch 62 SLA 1962)

Alaska has a statutory policy against retroactive interpretation of its statutes. Jones Enterprises, Inc. v. Atlas Serv. Corp., 442 F.2d 1136 (9th Cir. 1971).

This section embodies the general rule on retrospective operation of statutes. Watts v. Seward School Bd., Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

Retrospective laws are generally unjust, and neither accord with sound legislation nor with the fundamental principles of the social compact. Watts v Seward School Bd., Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

There is absolute prohibition against retrospective laws when their purpose is punitive, they then being denominated ex post facto laws. It is the sense of the situation that that which impels prohibition in such case exacts clearness of declaration when burdens are imposed upon completed and remote transactions, or consequences given to them of which there could have been no foresight or contemplation when they were planned and consummated. Watts v. Seward School Bd., Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966).

Chapter 174, SLA 1957, held to be prospective in its operation. — See Stephens v. Rogers Constr Co., Sup. Ct. Op. No 326 (File No. 517), 411 P.2d 205 (1966).

Sec. 01.10.100. Effect of repeals or amendments. (a) The repeal or amendment of any law does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under such law, unless the repealing or amending act so provides expressly. The law shall be treated as remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of the right, penalty, forfeiture, or liability.

(b) The expiration of a temporary law does not release or extinguish any penalty, forfeiture, or liability incurred or right accruing or accrued under such law unless the temporary law so provides expressly, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability or right accruing or accrued.

(c) When any act repealing a former act, section, or provision is itself repealed, such repeal does not revive the former act, section, or provision, unless it is expressly so provided. (§§ 19-1-1 ACLA 1949; am § 1 ch 4 ESLA 1955; am § 1 ch 28 SLA 1959)

Section contemplates penal statute.—See 1964 Op. Att'y Gen., No. 8.

Construction of general saving clause.—It is a fundamental rule of statutory construction that a general saving clause or statute preserves rights and liabilities which have accrued under the act repealed and operates to make applicable in designated situations the law as it existed before the repeal, unless such application is negatived by the express terms or clear implication of a particular repealing act, or where not otherwise provided by the repealing act. Territory of Alaska v. American Can Co., 16 Alaska 71, 137 F. Supp. 181 (D. Alas. 1956), aff'd, 17 Alaska 280, 246 F.2d 493 (9th Cir. 1957), rev'd on other grounds, 17 Alaska 779, 358 U.S. 224, 79 S. Ct. 274, 3 L. Ed. 2d 257 (1959).

And specific saving clause.—Where there are saving clauses in repealing statutes which are later in time, constituting the express will of the legislature, such have been taken as an indication of legislative intent to save nothing else from the repeal, and the general saving statute in force does

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[illegible] INC.
PHONE: 586-6442
[illegible], AK 99802

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PRELIMINARY RESEARCH INDICATES SOME STATES REQUIRE SUBMISSION OF GEOLOGIC DATA AS CONDITION OF PERMIT, E.G. 1. OREGON (SECTION 274.745-DRILLING LOGS, CAN REQUIRE OTHER DATA) 2. CAL. (PUB. RES. S. 6826-UPON REQUEST). SOME STATES ISSUE PERMITS PURSUANT TO RULES OF APPROPRIATE ADMINISTRATIVE AGENCIES, E.G. 1. WASH (S. 79.01.624) 2. LA. (S. 30.212). SOME PERMITS WILL HAVE CONDITIONS ATTACHED, E.G. TEXAS (NAT. RES. S. 52.233). SOME STATES APPARENTLY HAVE NO CONDITIONS, E.G. 1. MONTANA, 2. ARKANSAS, 3. SOUTH DAKOTA, 4. COLORADO, 5. WYOMING.

DAVID KEEHN, RESEARCH ASSISTANT NATIONAL ENERGY LAW AND POLICY INSTITUTE

1231 EST

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